

Aarif Latheef and Others Vs. Dr. Asha K. John and Others

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Court : Kerala

Decided On : Apr-01-2016

Judge : The Honourable Chief Justice Mr. Ashok Bhushan & A.M. Shaffique

Appeal No. : W.A. Nos. 660, 539, 553, 556,

Appellant : Aarif Latheef and Others

Respondent : Dr. Asha K. John and Others

Advocate for Pet/Ap. : Shri. Kaleeswaram Raj

Judgement :

Ashok Bhushan, C.J.

1. All these Writ Appeals except W.A. No.556 of 2016 arise out of W.P(C) No.39448 of 2015. Writ Appeal No.556 of 2016 arises out of the judgment in W.P(C) No.3504 of 2016. Common issues of fact and law being involved in all these Writ Appeals they have been heard together and are being decided by this common judgment. Writ Petitioners are the in-service candidates who have completed five years of service whereas the appellants are in-service candidates who have completed two years of service. There is inter-se dispute between the candidates who have completed five and two years service, respectively regarding admission to Post Graduate Medical Course, 2016. Writ petitioners who have completed five years of service shall be referred to as petitioners whereas the in-service candidates who have completed two years of service shall be referred as

appellants.

2. Brief facts and sequence of events giving rise to the Writ Appeals are: The issues which have been raised in this batch of Writ Appeals relate to admission to Post Graduate Medical Course, 2016 for inservice candidates. Prospectus for admission to PostGraduate Medical Degree/Diploma Course, 2016 as approved by the State Government by Government Order dated 10.12.2015 was issued. Clause 4.1 of the Prospectus provided for eligibility of admission. Clause 7.1 provided for eligibility for service quota. Clause 7.1.1 provided that applicants under service quota should have completed a minimum of two years service within a continuous period of three years under regular appointment in the concerned Department to become eligible to apply. In accordance with the Prospectus as issued after approval of the Government by Order dated 10.12.2015 in-service candidates who were eligible under clause 7.1.1 and who have completed two years regular service applied for appearing in the Post Graduate Medical Entrance Examination, 2016. The Entrance Examination was conducted by the Commissioner for Entrance Examinations, Government of Kerala on 31.01.2016. Writ PetitionNo.39448 of 2015 was filed by Dr.Asha K.John who had to her credit seven years service. It was stated that Prospectus for the Post Graduate Medical Course, 2016, which was uploaded in the website, contained in clause 7.1.1. the eligibility under service quota to only those who have completed a minimum five years on regular duty which prescription was withdrawn on the basis of the Government Order dated 10.12.2015 by which clause 7.1.1 as proposed was modified. Clause 7.1.1. of the Prospectus which was issued consequent to the Government Order dated 10.12.2015 contained the following:

7-1 Eligibility for service quota

7-1.1 The eligibility criteria for the service quota are the same as laid down in Clause 4. The applicants under Service Quota should have completed a minimum period of 2 years on duty within a continuous period of three years under regular appointment in the concerned Department to become eligible to apply. Provisional service (under MES/DHS/IMS/MS) if any, before the regular appointment will not be considered.

Petitioner's case in the Writ Petition was that the State Government has already enacted legislation, namely, Kerala Medical Officers' Admission to Post Graduate Courses Under Service Quota Act, 2008 (for short, the 2008 Act) under which Rules have been framed, namely, Kerala Medical Officers' Admission to Post Graduate Courses Under Service Quota Rules, 2010 (for short, the 2010 Rules). Rule 4(iii) of the Rules provides that the minimum period of service under Government to become eligible to apply for Service Quota shall be two years for Lecturers in Medical Education Service in the concerned discipline and five years for other State Service. The Prospectus in so far as the change made in clause 7.1.1. is not justifiable. Petitioner in the Writ Petition prayed for the following reliefs:

(i) Declare that only the candidates with minimum five years service under the Government of Kerala as stipulated in Rule 4(iii)(b) and Rule 6(i) of Ext.P2 Rules have the right to apply for admission to medical post graduate course under the health service quota.

(ii) Issue a Writ of certiorari or any other appropriate writ or order calling for the records relating to Ext.P4 Government Order and quash the same to the extent it prescribes lesser period of Government service, to become eligible for medical post graduate admission under service quota, than the minimum period of service stipulated in Ext.P2 Rules.

(iii) Issue a writ of certiorari or any other appropriate writ or order calling for the records relating to Ext.P5 modified prospectus and quash Clause 7.1.1 thereof, in so far as it prescribes lesser period of government service to become eligible for medical post graduate admission under service quota, than the minimum period of service stipulated in Ext.P2 Rules.

(iv) Issue a writ in the nature of mandamus or any other appropriate writ, order or direction commanding the respondents to make admission for medical post graduate course under health service quota from among the candidates who have minimum five years service prescribed in Rule 4(iii)(b) and Rule 6(i) of Ext.P2 Rules.

(v) Pass such other order or direction as this Hon'ble court deems to pass in the circumstances of the case.

In the Writ Petition, the State, Director of Health Services, Director of Medical Education and Commissioner for Medical Entrance Examinations were impleaded.

3. Another Writ Petition, W.P(C) No.3504 of 2016 was filed by Dr.Aligar Babu C., who has also applied for admission under service quota having completed more than five years of service. Petitioner also contended that eligibility for admission in-service quota should be five years as provided in Rule 4(iii) of the 2010 Rules, the Government cannot issue any Executive Order in violation of the statutory rules. Petitioner prayed for the following reliefs:

i) To issue a writ of certiorari quashing Ext.P6 and clause 7.1.1 of Ext.P7 as unjust, arbitrary and unsustainable.

ii) To issue a writ of certiorari quashing Ext.P8 to the extent to which it says the minimum service required for availing Service quota with respect to admission to the Post Graduate Medical Course, 2016, is completion of a minimum period of two years on duty within a continuous period of 3 years under regular appointment.

iii) To declare that any change made to clause 7.1.1. of Ext.P5 (original prospectus) would be illegal, arbitrary and untenable for the same is in violation of Exts.P3 and P4.

iv) To issue a writ of mandamus directing the respondents to complete the process of admission on the basis of Ext.P5.

v) To issue such other orders, directions or writs as may be prayed for and that this Honourable Court may deem fit on the facts and circumstances of the case.

Learned Single Judge decided W.P(C) No.39448 of 2015 on 07.01.2016. Learned Single Judge held that provision in the Prospectus in so far as it permits candidates having two years service to appear has to be upheld. However, as per Rule 4(iii) and 4(v) candidates having only two years service shall be entitled for

consideration for admission only when there are no candidates available having five years of service. Thus allotment for admission to the candidates who have only two years service shall be done only after the list of candidates having five years service is exhausted. Learned Single Judge disposed of the Writ Petition accordingly.

4. When W.P(C) No.3504 of 2016 came up for consideration, the learned Single Judge relying on his earlier judgment dated 07.01.2016 in W.P(C) No.39448 of 2015 disposed of the said Writ Petition in the light of the direction contained in the judgment dated 07.01.2016. Consequence of the judgments dated 07.01.2016 and 29.01.2016 was that admission to the Post Graduate Medical Course was to be made from the list of eligible candidates who have completed five years of service and candidates who have only two years of service were to be considered only when there are no eligible candidates in the list of candidates having completed five years of service. Prospectus was read down by the learned Single Judge in the above manner. Candidates who have two years of service to their credit feeling aggrieved by the judgments dated 07.01.2016 and 29.01.2016 in the aforesaid Writ Petitions, filed R.P. Nos.176 and 201 of 2016 with the leave of the Court. The Review petitioners contended that they were not parties to the Writ Petitions and in view of the judgment of the learned Single Judge admission to the Post Graduate Medical Course is not to be conducted on the basis of the inter se merit of candidates who have appeared in the common entrance examination. Review petitioners contended that seniority cannot be the basis for admission to the Post Graduate Medical Course which has already been held by the Apex Court in *Sudhir N. and Others v. State of Kerala and Others* ([2015] 6 SCC 685) and by permitting the candidates of five years service to have precedence over candidates who have two years of service even though higher in rank is nothing but a course adopted contrary to the law laid down by the Apex Court in *Sudhir N.'s case* (surpa). Learned Single Judge considered the Review Petitions and dismissed the same by order dated 04.03.2016. Aggrieved by the judgments of the learned Single Judge dated 07.01.2016 and 29.01.2016 and the orders dated 04.03.2016 dismissing the Review Petitions, these appeals have been filed. Writ Appeal No.660 of 2016 is filed against the judgment dated 07.01.2016 in W.P(C) No.39448 of 2015 and the order dated 04.03.2016 in R.P. No.176 of 2016. Writ

Appeal No.660 of 2016 is being treated as the leading Writ Appeal and reference of facts and pleadings in the said Writ Appeal shall suffice for deciding all the Writ Appeals.

5. We have heard Shri Krishnan Venugopal, learned Senior Counsel appearing for the appellant in W.A.No.660 of 2016, Shri Abraham Vakkanal, learned Senior Advocate, Shri George Poonthottam and Shri P.Chandrasekhar appeared for the other appellants. Senior Advocate Shri K.Gopalakrishna Kurup has appeared for the intervenor in W.A. No.553 of 2016 to support the Writ Petitioners. Advocates Shri Kaleeswaram Raj and Shri T.B.Hood appeared for the Writ Petitioners. Shri P.I.Davis, learned Senior Government Pleader appeared for the State.

6. Learned counsel for the appellants in support of the Writ Appeals contended that the Prospectus issued after approval by the Government Order dated 10.12.2015 was the only Prospectus issued for admission to Post Graduate Medical Degree/Diploma Course, 2016 which contained eligibility clause, 7.1.1 providing that those who have completed a minimum period of two years on duty within a continuous period of three years are eligible to apply. State was fully entitled to issue Prospectus and details of eligibility as per the statutory provisions contained in Section 5(3) of the 2008 Act. The State having provided eligibility for candidates having two years of service, there was no right in the Writ Petitioners to challenge clause 7.1.1 of the Prospectus or Government Order dated 10.12.2015. It is contended that the basis for admission in PostGraduate Medical Course is inter se merit of the candidates as reflected in the rank list prepared on the basis of common Entrance Examination. There is no question of giving precedence to candidates who have five years service for admission over the candidates who have two years of service by ignoring the inter se merit, seniority cannot be the basis for admission which has already been pronounced by the Apex Court in Sudhir N.'s case (supra). Sudhir N.'s case (supra) has clearly laid down that admission to Post Graduate Medical Course has to be on the basis of inter se merit of the candidates as reflected in the entrance examination. The procedure permitted by the learned Single Judge is to dilute the merit. In Sudhir N.'s case (supra) the Apex Court has already declared the provision of Section 5(4) of the 1998 Act which provided that the Post Graduate Course Selection Committee shall

finalise the selection list strictly based on the seniority in service of the Medical Officers ultra vires and beyond the legislative competence of the State. It is contended that Regulation 9 of the Medical Council of India Post Graduate Medical Education Regulations, 2000 (for short, the 2000 Regulations) as amended from time to time provides the basis for admission as only merit reflected in the Entrance Examination. State is not competent to make any different criteria for admission and judgment of the learned Single Judge directing to first consider for admission of candidates who have five years of service irrespective of the merit of the candidates having two years of service is nothing but a direction contrary to the law declared by the Apex Court in Sudhir N.'s case (supra). It is contended that when the State has treated the candidates having more than two years service as eligible and all the appellants and other candidates who have two years of service participated in the Entrance Examination and having secured ranks as per the marks given to them, admission can only be given in the Post Graduate Medical Course on the basis of the marks obtained in the Entrance Examination and the appellants' claim for admission cannot be allowed to be sacrificed on the ground that there are five years service candidates available, although less meritorious. Petitioner, Asha K. John even could not secure 50% marks in the Entrance Examination. Rule 4(iii) on which reliance has been placed by the petitioners and referred to by the learned Single Judge was the Rule framed in the context of seniority, when the seniority was the sole criteria for admission as per the 2008 Act. It having been declared that seniority cannot be the basis for admission, Rule 4 (iii) has lost its utility and significance on which no reliance can be placed in view of the law declared by the Apex Court in Sudhir N.'s case (supra). Learned counsel for the appellants have also referred to the Division Bench judgment of this Court dated 28.05.2015 (Dr. Abhilash Kumar v. State of Kerala), where the Division Bench after considering the 2008 Act, 2010 Rules and the 2000 Regulations held that the criteria for admission is the only criteria as provided in Regulation 9. In the above case this Court was considering whether in-service candidates were entitled for weightage for remote/difficult area service or also for rural area. Regulation 9 provides for remote/weightage for difficult area whereas the Rules provided for weightage for rural area also. It was held that weightage as provided in Regulation 9 shall only be applicable. It is contended that on the basis

of the aforesaid judgment in Dr. Abhilash Kumar's case, the judgment of the learned Single Judge cannot be sustained. It is contended that merit is casualty under Single Judge's Order and by the direction of the learned Single Judge the concept of seniority is introduced for admission in Post Graduate Medical Course. It was further contended that in previous year also, i.e., 2015, Post Graduate Medical Course admission, eligibility was only two years and admission was made on the basis of inter se merit. It is further contended that the Writ Petitions are liable to be dismissed on the ground of non-joinder of necessary parties. It is contended that none of the candidates having two years of service has been impleaded in the Writ Petition whereas the relief sought for in the Writ Petition was going to adversely affect the candidates having 2 years of service and hence no relief could have been granted to the Writ Petitioners. Shri George Poonthottam, adopting the submissions of Shri Krishnan Venugopal further contended that there is no necessity to challenge Rule 4 separately. He contended that merit alone is the criteria. Other counsel for the appellants also adopted the same submissions.

7. Shri Kaleeswaram Raj, learned counsel for the Petitioners refuting the submissions of the learned counsel for the appellants contended that Rule 4(iii) of the 2010 Rules is a Statutory Rule which has not been challenged or struck down. It is contended that when Statutory Rules provides that eligibility for in-service candidates is five years that cannot be whittled down by any Executive decision. Clause 7.1.1 of the Prospectus could not have been made by the State contrary to the prescription as provided in Rule 4(iii) of the 2010 Rules. Even if it is assumed that provision of Section 5(4) is non-est on the basis of the decision in Sudhir N.'s case (supra) that has no effect on Rule 4(iii). Section 5(3) of the 2008 Act provides for details of the eligibility for admission, duration of the course, allotment of seats, reservation of seats, fee structure and other details be published in the Prospectus before commencement for Entrance Examination. Prospectus has to be published in accordance with the Rules. Rules 4(iii) which fixed the eligibility criteria cannot be given a go-by by the State. Judgment of the learned Single Judge is well founded on the strength of Rule 4(iii). Learned counsel further contended that judgment of the Apex Court in Sudhir N.'s case (supra) need not be followed it being per incuriam. It is contended that the judgment in Sudhir N.'s case (supra) has relied on Regulation 9 of the 2000 Regulations which Regulations had already

been struck down by a three Judge Bench in *Christian Medical College, Vellore v. Union of India* ([2014] 2 SCC 305). It is contended that the judgment in the above case was delivered on 18.07.2013 which judgment was not referred to in *Sudhir N.'s case* (supra) and *Sudhir N.'s case* (supra) being based on Regulation 9 which having already been struck down by the three Judge Bench, the said judgment is per incuriam. It is further contended that the observations made by the Apex Court in *Sudhir N.'s case* (supra) are only an obiter and cannot be treated to be a binding precedent. It is further contended that a Division Bench of this Court in *Fenny K.P (Dr.) and Another v. State of Kerala and Others* (ILR 2014 [3] Kerala 361) held that by quashing Regulation 9, Regulation 9 prior to its amendment on 21.10.2010 shall not revive which view has already been followed by the Division bench in *Dr.Abhilash Kumar's case* (supra). It is contended that the judgment of the learned Single Judge is in accordance with the law laid down by the Division Bench in *Dr. Abhilash Kumar's case* (supra). Learned counsel for the Writ Petitioners relied on a judgment of the Karnataka High Court and submitted that admission based on slab system has been accepted. It is further contended that in view of the state of affairs at the time when the Writ Petition was filed and relief sought, there was no occasion to implead the candidates having two years of service. Candidates having two years of service were not to be adversely affected, hence it was not necessary to hear them in the Writ Petitions. There is no substance in the contention of the appellants that on the ground of non-joinder of parties, the Writ Petitions be dismissed. It is further contended that in any view of the matter, candidates having two years of service have already been heard in the Review Petitions as well as in these appeals, the grievance if any has been satisfied and on this ground no relief can be given to the appellants. Shri T.B.Hood, learned counsel for the Writ Petitioners has reiterated the submissions made by Shri Kaleeswaram Raj. It is further contended by Shri Hood, the learned counsel that Rule 4(iii) is a valid rule and even if the Rule is void it had to be challenged and without challenging the Rules the appellants cannot ask the court to ignore the same. It is further contended that there is a presumption of constitutionality of legislation including the subordinate legislation. The eligibility criteria should be in accordance with the Statutory Rules.

8. Shri Gopalakrishakurup, learned Senior Counsel appearing for the interveners in support of the Writ Petitioners contended that it is the power of the State to regulate admission and lay down the eligibility which is to be provided in the Rules. He submitted that service is defined in the Rules. Rule 4(iii) having not challenged or struck down, judgment of the learned Single Judge needs no interference. It is further contended that judgment of the Apex Court in Sudhir N.'s case (supra) does not have any effect on the force of Rule 4(iii). Learned Single Judge instead of striking down the Prospectus read down it to do justice. The only method to complete the admission is the method as directed by the learned Single Judge, i.e., at the time of allotment relaxation of eligibility can be read only to the extent that the prospectus permits two years service candidates to appear in the examination. It is contended that non-joinder of candidates of two years service has no consequence.

9. Shri P.I. Davis, learned Senior Government Pleader for the State supported the Prospectus issued by the State Government in consequence of Government Order dated 10.12.2015. He contended that the State has laid down eligibility in clause 7.1.1 of two years of service exercising its power of relaxation under Rule 4 (v) of the 2010 Rules. It is stated that it is the State which is entitled to prescribe the eligibility and other criteria for Entrance Examination and the State having laid down its criteria making eligibility to all candidates having more than two years of service, all the candidates are eligible and inter se merit of the in-service candidate has to be determined on the basis of the rank and merit position secured in the Entrance Examination. There cannot be two merit lists prepared separately for five and two years service and the two years service candidates cannot be asked to wait till five years service candidates are exhausted. Judgment of the learned Single Judge sacrifices inter se merit of the in-service candidates. State supports the claim of eligibility of all candidates who have more than two years of service.

10. Learned counsel for the parties referred to and relied upon various judgments of the Apex Court and this Court which shall be considered while considering the submissions in details.

11. From the submissions of parties and pleadings on record, the following are the issues which arise for consideration in these appeals.
- i. Whether clause 7.1.1 as approved by Government Order dated 10.12.2015 shall be treated as a clause for eligibility of in service candidates for Post Graduate Medical Course Admission?
 - ii. Whether clause 7.1.1 of the Prospectus in so far as it provides for eligibility to all service candidates who have completed two years of regular service within three years violates any statutory provision including Rule 4(iii) of the 2010 Rules?
 - iii. Whether the judgment of the Apex Court in Sudhir N.'s case declared Section 5 (4) of the 1998 Act unconstitutional on the strength of Regulation 9 of the 2000 Regulations and what is the consequence of such declaration on utility and validity of Rule 4(iii) and 4(v) of the 2010 Rules?
 - iv. Whether Regulation 9 of the 2000 Regulations providing for admission in Post Graduate Medical Course on the basis of merit as reflected in the Entrance Examination shall be treated to have been quashed by the judgment of the Apex Court in Christian Medical College, Vellore's case?
 - v. Whether Regulation 9 of the 2000 Regulations is not in existence, hence no question arises for finding out any repugnancy with the 2008 Act and the 2010 Rules framed by the State?
 - vi. Whether the judgment of the Apex Court in Sudhir N.'s case (supra) can be held to be judgment rendered per incuriam?
 - vii. Whether the judgment in Sudhir N.'s case (supra) is only an obiter?
 - viii. Whether admission to the Post Graduate Medical Course is to be conducted on the basis of inter se merit of the candidates as reflected in the Entrance Examination or two separate merit lists have to be prepared; one for candidates of five years of service and other for candidates of two years of service and first admission is to be offered to candidates having five of years service and only when there are no candidates available in the five years of service merit list,

candidates having two years of service should be considered even though candidates in rank list of two years of service may have secured more marks than those who are to be given admission under the rank list of five years of service?

ix. Whether non-joinder of candidates having two years of service in the two Writ Petitions giving rise to these appeals was fatal and the Writ Petitions were liable to be dismissed on that ground alone?

x. Relief, if any which the appellants are entitled in these appeals?

Issue Nos.1, ii, and iii

12. The admission to Post Graduate Medical Courses is conducted in the State of Kerala by Common Entrance Examination conducted by the Commissioner of Entrance Examinations. The selection of the candidates is to be made from the rank list prepared by the Commissioner on the basis of Post Graduate Medical Entrance Examination, 2016. The Kerala Legislature has enacted the 2008 Act under which enactment, the 2010 Rules have been framed.

The statement and objects of the 1978 Act needs to be referred to understand the background under which the said enactment was made. As is clear from the statement and object of the 2008 Act, the State noticed that as per the practice earlier followed, 40% of seats available in the State were earmarked to service candidates and as per Regulation 9 of 2000 Regulations, it was mandatory for all candidates to appear in the common Entrance Examination and to get qualified, 50% marks for general candidate and 40% marks for SC/ST candidate was necessary. The State noticed that request has been received from many quarters that in-service candidates are working round the clock for helping the public, hence, they do not get time to update their knowledge and, therefore they cannot compete with the general merit candidates so as to secure 50% marks in the common Entrance Examination. The statement and objects of the Act is as follows:

STATEMENT OF OBJECTS AND REASONS As per the practice hitherto followed in Post Graduate Medical Admission, forty percent of seats available in the State

were earmarked to service candidates, which consist of doctors of Health services Department, Medical college Lecturers and Employees' State Insurance doctors of the State. Admissions to these seats were made on the basis of seniority of service candidates in each category.

As per regulation 9 of the Post Graduate Medical Education Regulations of Medical Council of India 2000, it is mandatory for all candidates seeking admission to Post Graduate Medical Courses, to appear for Common Entrance Examination. In order to get qualified for admission to Post Graduate Medical Courses general category candidates have to secure fifty percent marks and SC/ST candidates have to secure forty percent marks in the Common Entrance Examination. The Hon'ble High Court of Kerala has also upheld the above stand of the Medical Council of India.

Accordingly from the year 2004 onwards Common Entrance Examination was made applicable to service candidates also. Hence they had to qualify with a minimum of fifty percent marks in the Entrance Examination for getting admission to Post graduate Courses.

Requests from many quarters were received by Government pointing out that the in service candidates are working round the clock for the health care of the public even in remote rural areas and they hardly get time to update their knowledge and hence they cannot compete with general merit candidates so as to secure fifty percent of marks in the Common Entrance Examination to qualify for admission to Post Graduate Courses. Government have therefore decided to frame a legislation to overcome the difficulties faced by the in-service candidates for admission to the Post Graduate Courses by setting apart forty percent of the total seats available to State quota for selection of Medical Officers under service quota considering their service under the government.

The bill seeks to achieve the above object.

13. By Section 4 of the Act, Post Medical Selection Committee was constituted. Section 5 of the Act provided for procedure of selection which provided as follows:

5. Procedure for selection.-(1) The Government may set apart seats not exceeding forty percent of the total seats available to state quota in an academic year, for selection of Medical Officers under service quota considering their service under the Government for admission to Post Graduate Medical Courses in the Medical Colleges of the State in such manner as may be prescribed.

(2) The academic qualification for admission to the Post Graduate Course shall be M.B.B.S degree with minimum fifty percent marks and the other qualifications shall be such as may be prescribed.

(3) The details of eligibility for admission, the duration of courses, allotment, fee to be paid, reservations of seats and such other details shall be published every year in the prospectus before the commencement of admission.

(4) The Postgraduate Course Selection Committee shall finalise the selection list strictly based on the seniority in service of the Medical Officers and following such other criteria as may be prescribed.

(5) The selection list finalised under subsection (4) shall be published by the Post graduate Course Selection Committee for the information of the applicants.

14. In pursuance of the 2008 Act, the 2010 Rules were framed where Rule 4 provides for procedure of selection of candidates under service quota.

15. Section 2(h) of the Act defines Prospectus which is as follows:

(h). 'Prospectus' means the prospectus issued by the Director of Medical Education under the direction of the Government every year for admission to Postgraduate Course;

16. According to the definition of Prospectus , the Prospectus is to be issued by the Director under the direction of the Government every year for admission to Post Graduate Medical Course. From the facts pleaded in the Writ Petitions, it appears that Prospectus was submitted before the Government for approval for 2016 selection on which Government issued an order dated 10.12.2015 issuing direction regarding Prospectus and approval of the Prospectus. The Prospectus

was published by the Director as per Government Order dated 10.12.2015. The Prospectus issued consequent to the Government Order dated 10.12.2015 provides for eligibility for admission in clause 4.1 and eligibility for admission under service quota in clause 7.1.1. Clauses 4.1 and 7.1.1 are quoted below:

4.1 Academic: Those candidates who are in possession of MBBS degree of provisional MBBS pass certificate recognized by MCI with MBBS qualification registered permanently or provisionally with MCI or State Medical Council and who have completed one year of internship or likely to complete it on or before 31st March 2016 are eligible for PGM-2016. Admission to such candidates will be given only after obtaining registration of T.C.. Medical Council.

7.1.1 The eligibility criteria for the service quota are the same as laid down in Clause 4. The applicants under Service Quota should have completed a minimum period of 2 years on duty within a continuous period of 3 years under regular appointment in the concerned Department to become eligible to apply Provisional service (under MES/DHS/IMS/MS) if any, before the regular appointment will not be considered.

17. From the above, it is clear that clause 7.1.1 as issued by the Director which is annexed as Ext.P5 is the Prospectus which has to be treated as prospectus for the admission to Medical Post Graduate Courses, 2016. The eligibility as mentioned in clause 7.1.1 provided to the in-service candidates provided that the applicants under service quota should have completed a minimum period of two years on duty within a continuous period of three years under regular employment.

18. Thus, as per the Prospectus, the State Government made all candidates who have completed minimum period of two years on duty eligible to compete for Post Graduate Medical Admission, 2016. As noted above, clause 7.1.1 of the Prospectus as issued after the Government order dated 10.12.2015 came to be challenged in two Writ Petitions giving rise to this batch of Writ Appeals. The main ground of challenge of the Petitioners was that clause 7.1.1 violates statutory Rules 2010 and hence, deserves to be set aside. It is alleged that the Prospectus directly contravenes the statutory Rule 4(iii) of the 2010 Rules. Rule 4(iii) for ready reference is quoted below:

4(iii) The Minimum period of service under Government of Kerala to become eligible to apply for Service Quota shall be--

(a) 2 years of Lecturers in Medical Education Service in the concerned discipline and

(b) 5 years for other State services Provided that unauthorized absence or absence due to Leave Without Allowances (including leave on Medical ground) and deputation period of candidates in Health Services will not be counter for the purpose of calculating the minimum period of service. .

19. The petitioners' contention is that since Rule 4(iii)(b) provides that minimum period of service to become eligible to apply for service quota is five years, hence, clause 7.1.1 of the Prospectus contravenes the said statutory prescription.

20. Learned Senior Government Pleader has contended that by virtue of sub-section (3) of Section 5 of the 2008 Act, the details of eligibility for admission is to be published in the Prospectus and the publication of Prospectus is under the orders of the Government. It is the Government which is statutorily entitled to lay down the eligibility. He submits that Rule 4(v) of the Rules empowers the State to relax the minimum period of service as prescribed under Rule 4 (iii) and the State has exercised its power of relaxation while providing eligibility to candidates having two years service. Hence, clause 7.1.1 read with Section 5(3) and Rule 4(v) is valid and in accordance with law. The petitioners' contention is refuted by the State and it is contended that the relaxation as envisaged in Rule 4(v) is to be exercised before the date of allotment when sufficient number of candidates having five years of service are not available which power was exercised by the State at the time of issuing the Prospectus.

21. What was the intend and purpose of Rule 4(v) has to be examined in context of the 2008 Act. The 2008 Act was enacted by State Legislature to get over Regulation 9 of the 2000 Regulations which provided for admission on the basis of merit in the Entrance Examination. The 2008 Act was enacted after obtaining presidential assent which clearly meant that the State Legislature intended to override the provisions of Regulation 9 and the in-service candidates wanted their

admission only on the basis of scheme of the 2008 Act. Section 3 of the Act contains a non obstante clause, which is to the following effect:

3. Selection of Medical Officers for admission to Postgraduate Course under the Service Quota.-- Notwithstanding anything contained in the Indian Medical Council Act, 1956 (Central Act 102 of 1956) or any rule or regulation issued there under or in any judgment, decree or order of any court or authority, the selection of Medical Officers for admission to Postgraduate Course of study in the State under the service quota shall be made only under the provisions of the Act.

22. Section 3 specifically overrides Indian Medical Council Act, 1956 or any Rule or Regulation there under. Thus, the 2008 Act intends to make admission of in-service quota candidates as per the 2008 Scheme, notwithstanding anything contrary in the Indian Medical Council Act, 1956.

23. Section 5(4) provided for the criteria for selection for admission. Section 5(4) provided that Post Graduate Selection Committee shall finalise the selection list strictly on the basis of seniority of inservice of the medical officers. The 2008 Act thus provided admission only on the basis of seniority. Rule 4 was framed to give effect to the statutory scheme under the 2008 Act. Rule 4(iii) provided that minimum period of service to become eligible to apply for service quota as five years for other State services was in the light of the fact that seniority was the only basis for selection. Rule 4(v) granted the power of the State Government to relax the minimum service before the date of allotment. 'Before the date of allotment', relaxation was provided since the basis of selection was only seniority and at the time of actual allotment when sufficient candidates having five years are not found, the State could have relaxed the criteria and made admission on the relaxed years of service. Section 5(4) came for consideration before the Apex Court in *Sudhir N. and Others v. State of Kerala and Others* [(2015) 6 SCC 685]. The in-service candidates had filed a writ petition in the High Court of Kerala challenging Section 5 (4) of the 2004 Act contending that the provision is ultra vires to the Regulation 9 and the admission in the post graduate medical courses can only be made on merits as per Regulation 9 and Section 5(4) be declared as invalid and inoperative. The Division Bench of the High Court by judgment in *Mohammed Riaz*

v. State of Kerala [2011 (2) KLT 294] disposed of the writ petition accepting the submission of the petitioners that Section 5(4) is not within the legislative competence of the State, field being covered by Medical Council of India Act, 1956 which was enacted with reference to Entry 66 of List I. However, the High Court held that those in-service candidates who acquired minimum eligibility i.e. 50% marks shall be given admission according to their seniority. Petitioners aggrieved by the judgment of the Kerala High Court filed a special leave petition in the Apex Court which was heard and decided on 12.01.2015 in Sudhir N's case (supra). Referring to the judgment of the High Court in Mohammed Riaz's case (supra), the Apex Court stated the following in paragraphs 11 and 12:

11. The High Court of Kerala has, by the judgment and order impugned in these appeals, agreed in principle that admission to post graduate courses can be made only on the basis of inter se seniority provided the candidates appear in the common entrance examination and qualify. It has relying upon the decisions of this Court in Dr. Preeti Srivastava and Another v. State of M. P. and Others, 1999 (7) SCC 120 and State of M.P. and Others v. Gopal D. Tirthani and Others, 2003 (7) SCC 83 held that the prescription of an entrance examination with minimum eligibility marks to be secured in the entrance test for post - graduate course is within the field covered by Entry 66 of List I and that the State Legislature cannot, by reference to Entry 25 of List III, make any law that may have the effect of encroaching upon the field occupied by Entry 66 of List I. The High Court observed:

"The principles of law emanating from the above include that the prescription as to the requirement of an entrance examination with a minimum eligibility bench mark to be acquired in that entrance test for post - graduated medical education is within the field covered by Entry 66 in List I and the competence of the State Legislature to make a law with reference to Entry 25 in List III would not enable it to make any such law encroaching on the field occupied by Entry 66 in List I. The MCI Regulations framed under S.33 of the IMC Act is insulated from any contradiction by any State legislation. Therefore, the State cannot make a law doing away with the requirement, for in - service candidates, to participate in the common entrance test for admission to postgraduate medical courses and obtaining the minimum

eligibility requirement prescribed by the MCI in the Regulations."

12. The High Court then held that inasmuch as S.5(4) of the impugned enactment provides for the preparation of a select list of in - service medical officers based on seniority, such selection shall be made from among in-service medical officers only who have appeared in the common entrance test of post - graduate medical education and obtained the minimum eligibility bench mark in that test in terms of the MCI Regulations. The High Court held:

"The conclusion is that the provision in S.5(4) of the State Act that the select list of in service medical officers for postgraduate medical education shall be strictly on the basis of seniority is subject to the requirement that such selection can be made only from among those in service medical officers who have undergone the common entrance test for postgraduate medical education and have obtained the minimum eligibility bench mark in that test in terms of the MCI Regulations. It is so declared. These writ petitions are allowed to that extent."

24. The Apex Court after noticing the provision of the 2008 Act and 2009 Regulations framed by the Medical Council of India held that Regulation 9 is a complete code in itself and the basis of determining the eligibility of the candidate, including the method to be adopted for determining the inter se merit is to emanate from Regulation 9. The Apex Court ultimately in paragraph (24) laid down the following: 24. It is in the light of the above pronouncements futile to argue that the impugned legislation can hold the field even when it is in clear breach of the Medical Council of India's Regulations. The High Court was, in our opinion, right in holding that inasmuch as the provisions of S.5(4) of the impugned enactment provides a basis for selection of candidates different from the one stipulated by the MCI Regulations it was beyond the legislative competence of the State Legislature. Having said that the High Court adopted a reconciliatory approach when it directed that seniority of the in - service candidates ill continue to play a role provided the candidates concerned have appeared in the common entrance test and secured the minimum percentage of marks stipulated by the Regulations. The High Court was, in our opinion, not correct in making that declaration. That is because, even when in Gopal D. Tirthani's case (supra) this Court has allowed in -

service candidates to be treated as a separate channel for admission to post - graduate course within that category also admission can be granted only on the basis of merit. A meritorious in - service candidate cannot be denied admission only because he has an eligible senior above him though lower in merit. It is now fairly well settled that merit and merit alone can be the basis of admission among candidates belonging to any given category. In service candidates belong to one category. Their inter se merit cannot be overlooked only to promote seniority which has no place in the scheme of MCI Regulations. That does not mean that merit based admissions to in - service candidates cannot take into account the service rendered by such candidates in rural areas. Weightage for such service is permissible while determining the merit of the candidates in terms of the third proviso to Regulation 9 (supra). Suffice it to say that Regulation 9 remains as the only effective and permissible basis for granting admission to in - service candidates provisions of S.5 (4) of the impugned enactment notwithstanding. That being so, admissions can and ought to be made only on the basis of inter se merit of the candidates determined in terms of the said principle which gives no weightage to seniority simplicitor.

25. The Apex Court approved the judgment of the High Court which held that Section 5(4) of the 2008 Act which provided the basis for selection of candidates on the basis of seniority of in-service candidates is beyond the legislative competence of State Legislature. In the said judgment, the Apex Court also held that merit alone can be the basis of admission among the candidates belonging to any category i.e. in-service candidates also. It was further observed.- a meritorious in-service candidate cannot be denied admission only because he has an eligible senior above him though lower in merit .

26. In view of the above clear pronouncement of the Apex Court in Sudhir N's case (supra), the provisions of the 2008 Act which provided for admission of post graduate medical entrance on the basis of seniority have become inoperative and cannot be relied on.

27. Now coming to Rules 4(iii) and 4(v), it is clear that Rule 4(iii) fixed as eligibility of 5 years when the seniority was the sole criteria for admission. Much submission

has been pressed by the learned counsel for the petitioner that Rule 4(iii) was not in challenge in Mohammed Riaz's case (supra) or Sudhir N's case (supra) and it has not yet been struck down. Hence, the statutory rule has to be given effect to. We are afraid that such a broad submission cannot be accepted in view of the judgment of the Apex Court in Sudhir N's case (supra). The seniority as basis for admission and the eligibility of in-service candidates has lost its relevance and utility in view of the pronouncement of the Supreme Court. The period of eligibility to appear for in-service candidates has also to be read accordingly. Furthermore, even assuming without admitting that Rule 4(iii) is to be followed for the purpose of eligibility. It is relevant to note that Rule 4(v) empowers the State to relax. The power of relaxation in eligibility with regard to 5 years of service as provided in Rule 4(iii) has to be read in context of method of admission which is to be adopted. There is no denial that admission to post graduate medical courses is to be given on the basis of Common Entrance Examination and the rank list prepared therein.

28. Whether the power of relaxation is to be exercised immediately before the allotment or whether it can be exercised at any stage prior to the allotment is the related question to be answered. When the candidates are to appear in a written examination, the eligibility has to be fixed in the Prospectus itself before candidates are permitted to appear in the examination. There is no question of exercising power of relaxation after eligibility is fixed in the Prospectus. Thus, in view of the fact that admissions are to be on the basis of Common Entrance Examination, the power of relaxation as given under Rule 4(v) has to be exercised at time of issuance of Prospectus. We, thus, find force in the submission of the learned counsel appearing for the State that Prospectus, clause 7.1.1 was issued in exercise of the power of relaxation given under Rule 4(v). The Government order dated 10.12.2015 which has been brought on record as Ext.P4, when the draft Prospectus prepared by Director of Medical Education is approved with modification, the power of relaxation was exercised. It is useful to extract the order dated 10.12.2015 of the Government which is to the following effect:

As per letter read above, the Director of Medical Education has forwarded the draft prospectus for admission to post Graduate Medical Degree/Diploma Courses 2016-17. Government have examined the proposal in detail and are pleased to

approve the same with modifications as below and is appended to this order.

1. Clause 6(3)- They shall.....in clause 13.1 (C) of the prospectus is deleted.

2. The candidates who claim Ex-service Quota shall append a No Objection Certificate from the competent authority along with the application if he/she is a serving personnel. In the event of getting selection, such candidates shall produce the Discharge certificate at the time of allotment, failing which the candidate will not be considered for Ex-service Quota. The application shall accompany the copy of the Discharge Certificate in the case of non-serving candidates.

3. Clause 7.1- Eligibility for Service Quota are the same as laid down in clause 4. the applicant under Service Quota should have completed a minimum period of 2 years on duty within a continuous period of 3 years under regular appointment in the concerned Department to become eligible to apply. Provisional service (under MES/DHS/IMS/MS), if any before the regular appointment will not be considered.

The Commissioner for Entrance Examinations will arrange for the online publication of the Prospectus.

29. We, thus, come to the conclusion that clause 7.1.1 of the Prospectus as issued under the directions of the Government dated 10.12.2015 cannot be said to violate any statutory rule, including Rule 4(iii) of the 2010 Rules. Furthermore as laid down by the Apex Court in Sudhir N's case (supra) that the criteria for seniority for admission is no longer available and the provisions of Section 5(4) is beyond the legislative competence of the State, Rule 4 which was framed to give effect to Section 5(4) has also lost its utility and on that basis, petitioners cannot be allowed to assail the clause 7.1.1 of the Prospectus.

Issue Nos.iv and v :

30. Shri Kaleeswaram Raj, learned counsel for the petitioner has laid great emphasis on the judgment of the Apex Court in Christian Medical College, Vellore v. Union of India and others [(2014) 2 SCC 305]. The submission of Shri Kaleeswaram Raj is that Regulation 9 of the 2000 Regulations as amended by

notification dated 21.12.2010 was quashed by the Apex Court in Christian Medical College, Vellore's case (supra). Regulation 9 is no longer available for the appellants to contend that the provision of the 2008 Act and the 2010 Rules are repugnant to Regulation 9. He submits that Regulation 9 being not in existence as on date, the whole premise of submission of the appellants falls to the ground. He further contended that when Regulation 21.12.2010 has been quashed by Christian Medical College, Vellore's case (supra), even the earlier regulation which was in existence by amendment made in 2008 shall not revive. He submitted that the Division Bench judgment of this Court in Fenny, K.P. (Dr.)'s case (supra) has already held that after the judgment of Christian Medical College, Vellore's case (supra) quashing of Regulation 9, earlier regulation shall not revive. He has specifically referred to paragraph 49 of the judgment. He further contends that the Division Bench of this Court by its judgment in Dr.Abhilash Kumar's case (supra) had also followed the judgment in Fenny K.P.'s case (supra).

31. There is no dispute that Regulation 9 of 2000 Regulations came for consideration before the Apex Court in Christian Medical College, Vellore's case (supra). To what extent Regulation 9 was quashed and what is the ratio of Christian Medical College, Vellore's case (supra) are the question which needs to be considered in these writ appeals. It is useful to note the details, facts, judgment and ratio of Christian Medical College, Vellore's case (supra). Regulation 9 of 2000 Regulations was amended by notification dated 21.12.2010 by which amendment, a Single Eligibility-cum-Entrance Examination viz., National Eligibility-cum-Entrance Test (NEET) for admission to post graduate courses in each academic year was introduced. Several writ petitions in different High Courts and writ petitions under Article 32 were filed in the Apex Court challenging the Regulation 9 by which Single Eligibility-cum-Entrance Examination was introduced. In Christian Medical College, Vellore's case (supra), the grounds of challenge were noticed by the Apex Court itself. In paragraph (146) of the judgment, the Apex Court itself has noticed which is to the following effect:

146. Despite the various issues raised in this batch of cases, the central issue relates to the validity of the amended Regulations and the right of the MCI and the DCI thereunder to introduce and enforce a common entrance test, which has the

effect of denuding the State and private institutions, both aided and unaided, some enjoying the protection of Article 30, of their powers to admit students in the M.B.B.S., B.D.S. and the Postgraduate Courses conducted by them. There is little doubt that the impugned Notifications dated 21.12.2010 and 31.5.2012, respectively, and the amended Regulations directly affect the right of private institutions to admit students of their choice by conducting their own entrance examinations, as they have been doing all along. Attractive though it seems, the decision taken by the MCI and the DCI to hold a single National Eligibility-cum-Entrance Test to the M.B.B.S., B.D.S. and the Post-graduate courses in medicine and dentistry, purportedly with the intention of maintaining high standards in medical education, is fraught with difficulties, not the least of which is the competence of the MCI and the DCI to frame and notify such Regulations. The ancillary issues which arise in regard to the main issue, relate to the rights guaranteed to citizens under Article 19(1)(g) and to religious and linguistic minorities under Article 30 of the Constitution, to establish and administer educational institutions of their choice.

32. The notification dated 21.12.2010 was extracted by the Apex Court in paragraph (11) which is extracted herein below. The most important portion of paragraph (11) while extracting the notification are the words used by the Supreme Court i.e., for the sake of reference, the portion of the notification which is relevant for our purpose is extracted below . Thus, the Apex Court had extracted only that portion of the notification which was the subject matter of challenge, which is clear from the aforesaid statement. Paragraph (11) of the judgment is extracted below:

11. Similarly, by virtue of Notification No. MCI.18(1)/2010-Med./49070, in purported exercise of the powers conferred by Section 33 of the 1956 Act, the Medical Council of India, with the previous approval of the Central Government, made similar amendments to the Postgraduate Medical Education Regulations, 2000, providing for a single eligibility cum entrance examination. For the sake of reference, the portion of the notification which is relevant for our purpose is extracted herein below:

"No. MCI.18(1)/2010-Med./49070. In exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956(102 of 1956), the Medical Council of India with the previous approval of the Central Government hereby makes the following regulations to further amend the Postgraduate Medical Education Regulations, 2000 , namely:-

1. (i) These Regulations may be called the Postgraduate Medical Education (Amendment) Regulations, 2010 (Part-II) .

(ii) They shall come into force from the date of their publication in the Official Gazette.

2. In the Postgraduate Medical Education Regulations, 2000 , the following additions/modifications/ deletions/substitutions, shall be as indicated therein:-

3. Clause 9 under the heading 'SELECTION OF POSTGRADUATE STUDENTS' shall be substituted as under:-

9. Procedure for selection of candidate for Postgraduate courses shall be as follows:

(i). There shall be a single eligibility cum entrance examination namely 'National Eligibility-cum-Entrance Test for admission to Postgraduate Medical Courses' in each academic year. The overall superintendence, direction and control of National Eligibilitycum- Entrance Test shall vest with Medical Council of India. However, Medical Council of India with the previous approval of theCentral Government shall select organization/s to conduct 'National Eligibilitycum-Entrance Test for admission to Postgraduate courses'."

Two similar Notifications both bearing No.DE-22- 2012 dated 31.5.2012, were published by the Dental Council of India for the same purpose.

33. The Apex Court held that amendment dated 21.12.2010 in the 2000 Regulations were ultra vires to the provisions of Articles 19(1)(g), 25, 26A, 29(1) and 30(1) of the Constitution of India. The Apex Court further held that Medical Council of India is not empowered under 1956 Act to actually conduct NEET.

Paragraphs 177 and 178 are extracted as follows:

177. In the light of our aforesaid discussions and the views expressed in the various decisions cited, we have no hesitation in holding that the "Regulations on Graduate Medical Education (Amendment) 2010 (Part II)" and the "Post Graduate Medical Education (Amendment) Regulation, 2010 (Part II)", whereby the Medical Council of India introduced the single National Eligibility-cum- Entrance Test and the corresponding amendments in the Dentists Act, 1948, are ultra vires the provisions of Articles 19(1)(g), 25, 26(a), 29(1) and 30(1) of the Constitution, since they have the effect of denuding the States, State-run Universities and all medical colleges and institutions, including those enjoying the protection of the above provisions, from admitting students to their M.B.B.S., B.D.S. and Post- graduate courses, according to their own procedures, beliefs and dispensations, which has been found by this Court in the T.M.A. Pai Foundation case (supra), to be an integral facet of the right to administer. In our view, the role attributed to and the powers conferred on the MCI and the DCI under the provisions of the Indian Medical Council Act, 1956, and the Dentists Act, 1948, do not contemplate anything different and are restricted to laying down standards which are uniformly applicable to all medical colleges and institutions in India to ensure the excellence of medical education in India. The role assigned to the MCI under Sections 10A and 19A(1) of the 1956 Act vindicates such a conclusion.

178. As an off-shoot of the above, we also have no hesitation in holding that the Medical Council of India is not empowered under the 1956 Act to actually conduct the NEET.

34. Paragraph 179 is the operative portion of the judgment by which notification dated 21.12.2010 was quashed which is to the following effect.

179. The Transferred Cases and the Writ Petitions are, therefore, allowed and the impugned Notifications Nos. MCI-31(1)/2010-MED/49068, and MCI.18(1)/2010-MED/49070, both dated 21st December, 2010, published by the Medical Council of India along with Notification Nos. DE-22-2012 dated 31st May, 2012, published by the Dental Council of India and the amended Regulations sought to be implemented thereunder along with Notification Nos. DE-22-2012 dated 31st May,

2012, published by the Dental Council of India, are hereby quashed. This will not, however, invalidate actions so far taken under the amended Regulations, including the admissions already given on the basis of the NEET conducted by the Medical Council of India, the Dental Council of India and other private medical institutions, and the same shall be valid for all purposes.

35. As noted above, the portion of the notification which was under challenge before the Apex Court have been extracted in paragraph (11) and from the reading of the judgment it is clear that the Apex Court only considered the issue as to whether Medical Council of India can introduce a Single Eligibility-cum-Entrance Examination viz., NEET for admission to post graduate medical course in each academic year. The law laid down in the judgment is with the above respect. The judgment of the Apex Court thus has to be read to the extent it actually decided the issue and pronounced its order. Regulation 9 of the 2000 Regulations has various portions laying down criteria for admission and other related issues, including provision for weightage and other provisions. In Christian Medical College, Vellore's case (supra), the Apex Court shall be treated to have quashed the portion of the notification dated 21.2.2010 as extracted in paragraph 11 of the judgment by the Supreme Court itself.

36. The law declared by the Apex Court is binding on all force under Article 141. Every judgment has to be carefully read to find out ratio of the judgment as has been laid down by various courts. It is useful to refer to the judgment of House of Lord in *Quinn v. Leathem* (1901 AC 495) where at page 506 Earl of Halsbury made the following statement of law:- that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only on authority for what it actually decides . In *Ambika Quarry Works v. State of Gujarat and others* [(1987) 1 SCC 213] it was laid down that ratio of decision must be understood in the background of the facts of that case. In paragraph 18, the following observation was made:

18. The aforesaid observations have been set in detail in order to understand the true ratio of the said decision in the background of the facts of that case. It is true that this Court held that if the permission had been granted before the coming into operation of the 1980 Act and the forest land has been broken up or cleared, Cl. (ii) of S.2 of 1980 Act would not apply in such a case. But that decision was rendered in the background of the facts of that case. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. (See Lord Halsbury in *Quinn v. Leathern*, 1901 AC 495). But in view of the mandate of Art.141 that the ratio of the decision of this Court is a law of the land, Shri Govind Dass submitted that the ratio of a decision must be found out from finding out if the converse was not correct. But this Court, however, was cautious in expressing the reasons for the said decision in *State of Bihar v. Banshi Ram Modi*, (AIR 1985 SC 814) (supra). This Court observed in that decision that the result of taking the contrary view would be "that while digging for purposes of winning mica can get on, the lessee would be deprived of collecting felspar or quartz which he may come across while he is carrying on mining operation in winning mica. That would lead to be unreasonable result which will not in any way sub serve the object of the Act." There was an existing lease where mining operation was being carried on and what was due by incorporation of a new term was that while mining operations were being carried on some other minerals were available, he was giving right to collect those. The new lease only permitted utilisation or collection of the said other minerals.

37. The Apex Court in *Bhavanagar University v. Palitana Sugar Mill (P) Ltd. And others* [(2003) 2 SCC 111] has held that a little difference of facts or additional facts will make a lot of difference in the precedential value. In *ICICI Bank v. Municipal Corpn. Of Greater Bombay and others* [(2005) 6 SCC 404], the following was laid down by the Apex Court in paragraphs 8, 10, 11 and 12.

8. In the present case we are not considering the scope and ambit of S.328 of the Act, as, admittedly the advertisement in question is not sky sign within the meaning of S.328 of the Act. The ratio and effect of the judgment is required to be ascertained with reference to the question of law as decided by the Court. The

ratio of the judgment or the principle upon which the question before the Court is decided is alone binding as a precedent. The decision of the Supreme Court upon a question of law is considered to be a binding precedent, and this must be ascertained and determined by analysing all the material facts and issues involved in the case.

10. In *Madhav Rao Scindia v. Union of India* (1971 (1) SCC 85 : AIR 1971 SC 530) this Court said that it is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment.

11. In the matter of *CIT v. Sun Engg. Works (P) Ltd.* (1992 (4) SCC 363) Justice Anand (as His Lordship then was), speaking for the Court, has said that it is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by the Supreme Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Supreme Court. The decision on the question involved in the case in which it is rendered and while applying the decision to the later case, the courts must carefully try to ascertain the true principle laid down by the decision and not to pick out words or sentences from the judgment divorced from the context of the question under consideration by the Court.

12. In the case of *Municipal Corpn. of Greater Bombay S.328A* was not at all interpreted by this Court. For the case to be a binding precedent, fundamental requirement would be, that the law pronounced should result from the issues raised before the Court between the parties and argued on both sides. In the matter of the *Municipal Corporation of Greater Bombay* the definition of "sky sign" under S.328 came up for consideration. In reaching the conclusion that the huge metallic board exhibited by BPC petrol bunk on a pole with the name of the company and its symbol (shell symbol) was a sky sign, this Court laid emphasis on the expression "in the nature of an advertisement" occurring in the definition of

"sky sign" in para 10 which expression is not to be found in S.328A. While interpreting S.328 and construing the words "in the nature of an advertisement, announcement and direction", this Court held that the advertisement need not necessarily be only or solely for commercial exploitation whereas S.328A of the Act speaks about "advertisement" alone and not "in the nature of an advertisement". Normally the ratio of the case shall be deduced from the facts involved in the case and the particular provision of law which the Court has interpreted and the decision shall be read with reference to and in the context of particular statutory provisions involved in the matter.

38. In view of the pronouncements of the Apex Court as noticed above, the ratio of the judgment in Christian Medical College, Vellore's case (supra) is the ratio as laid down in paragraphs 177 and 178. The Apex Court in Christian Medical College, Vellore's case (supra) has not considered any other part of Regulation 9.

39. It is true that the Division Bench of this Court in Fenny K.P.'s case (supra) has laid down that after quashing of Regulation 9, the previous Regulation 9 will not automatically revive. We had occasion to refer to the judgment of the Division Bench in Fenny K.P.'s case (supra) and Dr.Abhilash Kumar M.P.'s case (supra). In Dr.Abhilash Kumar's case (supra) we have also considered the judgment of the Christian Medical College, Vellore's case (supra) and to the extent, the notification dated 21.12.2010 shall be treated to have been quashed. In paragraph (58) of the judgment of Dr.Abhilash Kumar's case (supra), we have stated the following.- Although, as noted above, in Christian Medical College, Vellore's case (supra), the Apex Court shall be deemed to have quashed the Notification as extracted in paragraph 11 confining to NEET . We are, thus, of the view that the quashing of Regulation by the Christian Medical College, Vellore's case (supra) has to confine to the actual part of the notification which has been consciously extracted in paragraph 11.

40. When a part of the statutory provision has been considered and quashed, there is no presumption that all parts of the statute shall be deemed to be quashed unless it is coupled with the fact that the statute was inseparable. We also note the submission of the learned counsel for the appellants that Medical Council of India

has already filed a review petition viz., R.P Nos.2159-2268/2013 in Christian Medical College, Vellore's case (supra) taking several grounds which review petitions are still pending and has been directed to be placed before the Larger Bench.

41. We, thus, conclude that, that the portion of Regulation 9 which provided for admission in Post Graduate Medical Courses is to be on the basis of merit as disclosed in the Entrance Examination, has to be treated as still surviving and all admissions in post graduate courses have to be given on the basis of merit criteria. The submission of the petitioners that Regulation 9 is not in existence, hence the statutory provision of the State have to be treated to be operative with full force, there being nothing in the Regulations of the MCI to be treated to be contradictory, cannot be accepted.

Issue Nos.vi and vii

42. Shri Kaleeswaram Raj, learned counsel for the petitioners submitted that judgment of the Apex Court in Sudhir N.'s case (supra) has no precedential value since the judgment was rendered per incuriam. It is contended that in Sudhir N.'s case supra) Section 5(4) of the 1998 Act was read down relying on Regulation 9 of the 2000 Regulations as it stood before 2010 whereas earlier Regulation was substituted by Notification dated 21.12.2010 which was quashed by the Apex Court in Christian Medical College, Vellore's case (supra). The Apex Court having not considered that Regulation No.9 has already been struck down by the Apex Court in Christian Medical College, Vellore's case (supra), the judgment in Sudhir N.'s case (supra) which was delivered without considering the earlier judgment of the larger Bench, i.e., Christian Medical College, Vellore's case(supra), is to be considered as per incuriam. Learned counsel has relied on the judgment of the Apex Court in Rattiram and Others v. State of Madhya Pradesh ([2012] 4 SCC 516). The Apex Court in the above said case elaborating the concept of per incuriam laid down the following in paragraphs 30 to 33:

30. In this context, it is useful to refer to a passage from A. R. Antulay (supra), wherein, Sabyasachi Mukharji, J. (as his Lordship then was), while dealing with the concept of per incuriam, had observed thus:

"42. Per incuriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the Court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong."

Again, in the said decision, at a later stage, the Court observed:

47. It is a settled rule that if a decision has been given per incuriam the Court can ignore it."

31. In Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court, Chandigarh and Others, 1990 KHC 992 : 1990 (3) SCC 682 : 1991 SCC (LandS) 71 : 1990 (2) LLJ 70 : 1990 (4) SLR 154 another Constitution Bench, while dealing with the issue of per incuriam, opined as under:

"40. The Latin expression per incuriam means through inadvertence. A decision can be said generally to be given per incuriam when this Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of this Court."

32. In State of U.P. And Another v. Synthetics and Chemicals Ltd. and Another, 1991 KHC 1164 : 1991 (4) SCC 139 a two - Judge Bench adverted in detail to the aspect of per incuriam and proceeded to highlight as follows:

"40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English Courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young v. Bristol Aeroplane Co. Ltd., 1944 (1) KB 718 : 1944(2) ALL ER 293. Same has been accepted, approved and adopted by this Court while interpreting Art.141 of the Constitution which embodies the doctrine of precedents as a matter of law."

33. Recently, in Siddharam Satlingappa Mhetre v. State of Maharashtra and Others, 2010 KHC 4952 : AIR 2011 SC 312 : 2011 (1) SCC 694 : ILR 2010 (4) Ker. 763 : 2010 (4) KLT 930 while addressing the issue of per incuriam, a two -

Judge Bench, speaking through one of us (Bhandari, J.), after referring to the dictum in *Bristol Aeroplane Co. Ltd.* (supra) and certain passages from Halsbury's Laws of England and Raghbir Singh (supra), has stated thus:

"138. The analysis of English and Indian Law clearly leads to the irresistible conclusion that not only the judgment of a larger strength is binding on a judgment of smaller strength but the judgment of a co - equal strength is also binding on a Bench of Judges of co - equal strength. In the instant case, judgments mentioned in paragraphs 135 and 136 are by two or three judges of this Court. These judgments have clearly ignored a Constitution Bench judgment of this Court in Sibbia's case (supra) which has comprehensively dealt with all the facets of anticipatory bail enumerated under S.438 of Code of Criminal Procedure. Consequently, judgments mentioned in paragraphs 135 and 136 of this judgment are per incuriam.

139. In case there is no judgment of a Constitution Bench or larger Bench of binding nature and if the Court doubts the correctness of the judgments by two or three judges, then the proper course would be to request Hon'ble the Chief Justice to refer the matter to a larger Bench of appropriate strength."

Another judgment relied on by the learned counsel for the petitioners is *Siddharam Satlingappa Mhetre v. state of Maharashtra* ([2011] 1 SCC 694). In the above case after noticing the earlier judgment of the English Courts and Apex Courts, the following was laid down in paragraph 149:

149. The analysis of English and Indian Law clearly leads to the irresistible conclusion that not only the judgment of a larger strength is binding on a judgment of smaller strength but the judgment of a co - equal strength is also binding on a Bench of judges of co equal strength. In the instant case, judgments mentioned in paragraphs 135 and 136 are by two or three judges of this court. These judgments have clearly ignored a Constitution Bench judgment of this court in Sibbia's case (supra) which has comprehensively dealt with all the facets of anticipatory bail enumerated under S.438 of Cr PC. Consequently, judgments mentioned in paragraphs 135 and 136 of this judgment are per incuriam.

There cannot be any dispute to the proposition as laid down by the Apex Court in the above noted two cases. A bench of co-ordinate strength is bound by the earlier judgment of the co-ordinate or larger strength. There cannot be any dispute that the earlier judgment in Christian Medical College, Vellore's case (supra) which is a three Judge Bench was clearly binding on the two Judge Bench decision in Sudhir N.'s case (supra). But the question is as to whether the two Judge Bench in Sudhir N.'s case (supra) has laid down any proposition which is contrary to the proposition laid down in Christian Medical College, Vellore's case (supra). What is binding in a judgment is ratio decedendi. We have considered in detail the issues raised and decided by the three Judge Bench in Christian Medical College, Vellore's case (supra) in the preceding part of this judgment. The issue which came for consideration in Sudhir N.'s case (supra) was as to whether admission in Post Graduate Medical Course is to be according to Regulation 9 or the criteria laid down by the State Legislation shall govern the field. Paragraph 24 of the judgment in Sudhir N.'s case (supra), extracted above has laid down that merit alone is the criteria for admission in Post Graduate Medical Course and inter-se seniority of the in service candidates is not the criterion for admission. Merit alone can be basis of admission amongst the candidates belonging to in service category. There is nothing contrary to the above said ratio in the three Judge Bench in Christian Medical College, Vellore's case (supra). Ratio of judgment is what is actually decided in the case not as what shall logically follow. Thus we conclude that in Sudhir N.'s case (supra), the ratio laid down in Christian Medical College, Vellore's case (supra) was not disregarded. Further, with regard to Regulation 9 which was referred to and relied in Sudhir N.'s case (supra) was the Regulation as it held its field on the date the Division Bench of this Court delivered its judgment in Mohammed Riyad' case (supra). Sudhir N.'s case (supra) has rightly referred to and relied on Regulation 9 of the 2000 Regulations while considering the criteria of seniority which was provided in Section 5(4) of the 1998 Act and the judgment of the Apex Court in Sudhir N.'s case (supra) cannot be said to be per incuriam and we do not find any substance in the above submission.

43. Another limb of submission made by the learned counsel is that the observations made by the Apex Court in Sudhir N.'s case (supra) is only an obiter and is not binding. The Apex Court in Director of Settlement A.P. v. M.R. Apparao

([2002] 4 SCC 638) had occasion to consider 'obiter', the Apex Court laid down in the above case that an obiter dictum as distinguished from a ratio decidendi is an observation by the court on a logical question suggested in a case before it but not arising in such manner as to require a decision. The following was laid down in paragraph 7:

7. So far as the first question is concerned, Art.141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has 'declared law' it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An 'obiter dictum' as distinguished from a ratio decidendi is an observation by Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a bind effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Art.141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision.

Apex Court again in *State of Haryana v. Ranbir* ([2006] 5 SCC 167) had occasion to consider the difference between dicta and an obiter. The following was laid down in paragraph 12:

A decision, it is well settled, is an authority for what it decides and not what can logically be deduced there from. The distinction between a dicta and obiter is well known. Obiter dicta is more or less presumably unnecessary to the decision. It may be an expression of a view point or sentiments which has no binding effect. See Additional District Magistrate, Jabalpur etc. v. Shivakant Shukla etc. (1976 (2) SCC 521). It is also well settled that the statements which are not part of the ratio decidendi constitute obiter dicta and are not authoritative. (See Division Controller, K.S.R.T.C. v. Mahadeva Shetty and Another (2003 (7) SCC 197).

44. In view of the law as noted above, we have to consider as to whether the observations of the Apex Court in Sudhir N.'s case (supra) and especially the law laid down in paragraph 24 can be treated to be an obiter or is a dictum laid down by the Apex Court. In Sudhir N.'s case (supra) question which came for consideration was whether, for admission in Post Graduate Medical Course of in-service candidates, the criteria is seniority as laid down in Section 5(4) of the 2008 Act or not. The issue which arose for consideration and the judgment of the Division Bench of this Court have been noticed in paragraph 1. Paragraphs 1 and 7 which are relevant are quoted below:

1. These appeals arise out of a judgment and order dated 30th March, 2011 passed by the High Court of Kerala at Ernakulam in Writ Petitions No. 1014 of 2009 and 2610 of 2010 filed by the respondents whereby the High Court has allowed the said petitions with the direction that selection of in - service medical officers for post - graduate medical education under S.5(4) of the Kerala Medical Officers' Admission to Postgraduate Courses under Service Quota Act, 2008 (Kerala Act 29 of 2008), shall be made strictly on the basis of inter se seniority of the candidates who have taken the common entrance test for post - graduate medical education and have obtained the minimum eligibility bench mark in that test in terms of the Regulations framed by the Medical Council of India.

7. The primary ground on which the challenge to the validity of the legislation was mounted by the writ petitioners was that the State Legislature could not enact a law that would make selection for admission to the post - graduate courses dependent solely on the seniority of the in - service candidates without prescribing

the minimum conditions of eligibility for the candidates concerned. Competence of the State Legislature to enact S.5(4) of the impugned Legislation was also called in question on the ground that the said piece of legislation violated the regulations framed by the Medical Council of India the authority competent to do so under the Medical Council of India Act, 1956. It was argued that the Post - Graduate Medical Education Regulations, 2000 provided the minimum requirements that all the candidates have to fulfil. Inasmuch as the State enactment contrary to the said regulation and requirement postulates that selection of candidates shall be made only on the basis of seniority it was beyond the legislative competence of the Kerala State Legislature. The Indian Medical Council Act and the MCI Regulations framed under the same were, argued the writ petitioners - respondents herein, referable only to Entry 66 of List I of Seventh Schedule. Any legislation enacted by the State Legislature in exercise of its power under Entry 25 in List III was subject to any law to the contrary passed by the Parliament in exercise of its power under Entry 66 of List I. That the State Act was reserved for consideration of the President and that it has received the assent of His Excellency in terms of Art.254(2) of the Constitution did not save the legislation from the vice of legislative incompetence.

Thus the question which had come up for consideration in Sudhir N.'s case (supra) was a question as to whether for admission in Post Graduate Medical Course seniority as required in Section 5(4) of the 2008 Act or merit as laid down in the 2000 Regulations shall govern the field. The Apex Court noticing the earlier judgment of the Apex Court in *State of Tamil Nadu v. Adhiyaman Educational and Research Institute* ([1995] 4 SCC 104 and *Preeti Srivastava v. State of M.P.* ([1997] 7 SCC 120) laid down that Section 5(4) was beyond the legislative competence of the State and the basis for admission can only be merit. The observations of the Apex Court in *Sudhir N.'s case* (supra) cannot be said to be an obiter and what was laid down in paragraph 24 is ratio decidendi of the judgment which is a binding precedent.

45. Dispute between the petitioners and appellants is regarding the basis of granting admission/allotment of Course and Colleges. Petitioner's case is that the petitioners who have completed five years in-service shall be entitled to take admission on the basis of the inter se merit of the candidates who have completed five years and the candidates who have only two years service can be considered for admission only when there is no one eligible even if lower in merit amongst the in-service candidates having five years of service. As noted above, learned counsel for the petitioners have challenged clause 7.1.1 of the Prospectus by which the State while issuing the Prospectus has provided that all those candidates who have two years or more regular service are eligible to appear in the entrance examination. Petitioners' challenge was that the said clause is contrary to Rule 4(iii) of the 2010 Rules which provides that the minimum period of service under the Kerala Government to become eligible to apply for service quota is five years for other State services. It was contended that clause 7.1.1 in the Prospectus giving eligibility to service candidates of two years is contrary to Rule 4(iii) of the 2010 Rules is liable to be struck down.

46. Learned Single Judge vide his judgment dated 07.01.2016 did not quash clause 7.1.1. and held that candidates who satisfied the minimum period of two years within a continuous period of three years are eligible to apply in terms of the Prospectus. Learned Single Judge however, after accepting the claim of eligibility of in-service candidates having two years of service proceeded to issue a direction that allotment of seats to candidates having two years of service can be entertained after absorption of candidates who have five years service. Following are the directions issued by the learned Single Judge

- 1) The candidates satisfy minimum period of 2 years on duty in a continuous period of 3 years under regular appointment are also eligible to apply in terms of prospectus and in the light of the Government Order.
- 2) However, their allotment is only after exhaustion of the allotment to the candidates, who would satisfy the minimum service of five years as contemplated in Rule 4 (iii) (b).

3) The Entrance Commissioner has to prepare separate lists of candidates who are having five years minimum service and candidates who are having a minimum service of 2 years. Therefore, the allotment to the candidates who do not satisfy minimum five years of service would depend upon the availability of seats after exhaustion of allotment to the candidates who are having minimum five years service.

4) It is made clear that the above directions would not apply to the candidates who are aspiring for admission in category of Rule 4 (iii) (a).

47. As noticed above, the Apex Court in Sudhir N.'s case (supra) in paragraph 24 laid down that a meritorious in-service candidate cannot be denied admission only because he has an eligible senior above him though lower in merit. It is now fairly well settled that merit and merit alone can be the basis of admission among candidates belonging to any given category. In-service candidates belong to one category. Their inter se merit cannot be overlooked only to promote seniority which has no place in the scheme of the MCI Regulations. The directions of the learned Single Judge thus are in teeth of the above observations of the Apex Court in Sudhir N.'s case (supra). When the two years service candidates filed Review Petitions praying for review of the judgment dated 07.01.2016 on the strength of the judgment of the Apex Court in Sudhir N.'s case (supra), the learned Single Judge rejecting the submissions made the following observations in paragraph 14:

14. The Sudhir's case (supra) only laid down the principles relating to applying the norms among the class for selection and not with reference to eligibility conditions. The norms of selection cannot be equated with eligibility conditions. The judgment in Sudhir's case would apply only if the candidates aspiring for admission in service quota forms into separate class. The admission among the class can only be based on merit as laid down in Sudhir's case and cannot be based on seniority as provided under Section 5(4), in the light of Sudhir's case. When Rules clearly distinguish the eligibility of two separate class and so long as Rules remain in statutory book, clause in the Prospectus can be read and understood only in terms of the Rules. Therefore, I do not find any merit in the review petitions, the review petitions are accordingly dismissed.

The view of the learned Single Judge that the judgment in Sudhir N.'s case (supra) would apply only if the candidates aspiring for service quota forms into separate class cannot be approved. The Apex Court was considering the admission of in-service candidates and in paragraph 24 it has been clearly held that in service candidates can form only one category. There cannot be any discrimination between in-service candidates in their admission once they are held eligible to appear in the entrance examination. As noted above, the State Government in the Prospectus has given eligibility to all candidates who have minimum two years service, hence all in-service candidates who have two years service or more form one class and appeared in the Entrance Examination, their admission to the Post Graduate Medical Course has to be on the basis of merit as reflected in the Entrance Examination and five years service candidates cannot be heard to say that they alone are entitled to take admission at the first instance disregarding the claim of two years service candidates even if having more merit. We have already held that clause 7.1.1 in the Prospectus laying down the eligibility for entrance examination did not violate any of the statutory provisions. Thus what the learned Single Judge has directed is clearly in the teeth of the judgment of the Apex Court in Sudhir N.'s case (supra) and the learned Single Judge distinguished Sudhir N.'s case (supra) on a wrong basis.

48. After the judgment of the learned Single Judge, the State had issued provisional rank list both for candidates having five years of service and those having two years of service which has been brought on record in W.A. No.660 of 2016 as Annexure-A1. Marks obtained by the candidates who have five years service and marks of candidates who have two years service have been mentioned in Annexure-A1 and separate ranks have been assigned to both the groups. For eg., in five years service rank list, candidate who has secured first rank has total 932.4296 marks after adding weightage for difficult rural area service whereas the candidate who has secured first rank among the candidates having two years of service has total marks 1078.985 after adding weightage of difficult rural area service. Similarly there are other candidates in the two years lists who have secured much higher marks than those included in five years service rank list. In accordance with the direction of the learned Single Judge a candidate who has secured higher marks shall not be considered for admission

unless rank list of candidates having five years of service exhaust. The above procedure for admission is unsustainable. When in-service candidates appear in Entrance Examination their admission in Post Graduate Medical Course has to be on the basis of the marks as reflected in the examination.

There has to be one rank list for all in-service candidates and it should be on the basis of the marks obtained in the Entrance Examination that admission to the Post Graduate Medical Course has to be completed. We thus are of the view that the directions issued by the learned Single Judge to prepare two separate rank lists of in-service candidates is unsustainable.

Issue No.ix

49. One submission which has been pressed by the learned counsel for the appellants is that in the Writ Petitions filed by the petitioners none of the two years service candidates has been impleaded and when the petitioners have prayed for quashing clause 7.1.1 of the Prospectus by which eligibility was given to two years service candidates, some of the two years service candidates ought to have been impleaded in the Writ Petitions and the Writ Petitions are to be dismissed for non-joinder of parties. Learned counsel for the appellants has placed reliance on the judgment of the Apex Court in Civil Appeal No.6774 of 2015 (Poonam v. State of U.P. and Others). Shri Kaleeswaram Raj, learned counsel for the petitioners refuting the above submission contended that two years service candidates were not necessary parties and the Writ Petitions cannot be dismissed on the ground of non-joinder of necessary parties. Learned counsel further contended that in any view of the matter, two years service candidates were heard when they sought review of the judgment and further in these appeals, hence their grievance if any has been satisfied and on the ground of non-joining of two years service candidates, the judgment of the learned Single Judge need not be interfered.

50. For the purpose of the present case we are of the view that it is not necessary for us to enter into as to whether non-impleadment of candidates having two years service was fatal for the Writ Petitions or not. Suffice it to say that candidates having two years service having been heard in the Review Petitions as well as in these appeals and we having proceeded to decide their claim on merit, it is not

necessary to enter into the above issue for the purpose of the present case. The issue is decided accordingly.

Issue No.x

51. Now we come to the reliefs. We have already held that the State having decided to consider all candidates in service having 2 years or more eligible to appear in the entrance examination, the admission to the Post Graduate Medical Course has to be on the basis of inter se merit, i.e., on the basis of the rank as per the marks obtained by the in service candidates and there has to be one rank list prepared on the basis of the respective marks obtained by the in service candidates.

52. Learned counsel for the parties have stated that the marks obtained by both the five years service candidates and two years service candidates were published, but the actual counselling for admission is yet to begin and it shall be on or after 4th April, 2016.

In view of the foregoing discussion, all the Writ Appeals are allowed. Judgment of the learned Single Judge dated 07.01.2016 in W.P(C) No.34498 of 2015, judgment dated 29.01.2016 in W.P(C) No.3405 of 2016 and orders dated 04.03.2016 in R.P. Nos.176 and 201 of 2016 are set aside. Both the Writ Petitions are dismissed.

Parties shall bear their own costs.

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