(2011) 6 ADJ 443 : (2011) 3 UPLBEC 1882

Allahabad High Court

Case No: Writ C No. 16718 of 2010

Dr. Nupur Singh		APPELLANT
	Vs	
State of U.P. and Others		RESPONDENT

Date of Decision: May 13, 2011

Acts Referred:
Civil Services Examination Rules, 1990 â€" Rule 17#Constitution of India, 1950 â€" Article 14, 21, 32#Uttar Pradesh State Universities Act, 1973 â€" Section 23(5), 28(5)

Citation: (2011) 6 ADJ 443 : (2011) 3 UPLBEC 1882

Hon'ble Judges: Ashok Bhushan, J; Arun Tandon, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Ashok Bhushan, J.
These writ petitions have been placed before this Bench under the orders of Hon''ble the Chief Justice dated 18th

May, 2010 for answering the following two questions as framed by the Hon''ble Single Judge vide his order dated 17th May, 2010:

(1) Which of the two decisions namely Writ Petition No. 286 of 1991 (supra) decided on 21st October, 1991 and Dr. Sanjay Sharma (supra)

lays down the correct law?

(2) Whether Clause 8(h) of the Notification dated 9th October, 1990, as amended by the Notification dated 8th July, 1996, which restricts

candidates admitted to the Diploma Course from seeking admission in the same speciality in the Degree Course in the subsequent year to the

exclusion of all other Degree or the Diploma Courses is violative of Article 14 of the Constitution?

2. Writ Petition No. 16718 of 2010 (Dr. Nupur Singh v. State of U.P. and Anr.) is being treated as leading writ petition since in the aforesaid writ

petition counter affidavit and two supplementary counter affidavits have been filed. Reference of the facts of the aforesaid writ petition shall suffice

for answering the questions referred.

3. Dr. Nupur Singh, the Petitioner, appeared in the U.P. Post Graduate Medical Entrance Examination-2009 and on the basis of her rank in

general category she appeared in the counseling and got admission in diploma in Gynaecology and Obstetrics in Rani Laxmiby Medical College,

Jhansi where she joined and was pursuing her diploma course. The Petitioner appeared in U.P. Post Graduate Medical Entrance Examination-

2010 as advertised on 8th January, 2010. The Petitioner appeared in the examination and secured 183 rank in the result against general category.

In the prospectus of the Examination-2010 there was condition in Clause (iv)(b), which provides as under:

(iv)(b). he/she is presently pursuing P.G. Diploma course in any subject, with the condition that he/she will be considered for the Postgraduate

Degree course in that subject only.

4. The Petitioner has filed this writ petition praying for quashing Condition No. (iv)(b) of the Information Brochure of U.P. Post Graduate Medical

Entrance Examination-2010 and further for a writ of mandamus commanding the Respondents to permit the Petitioner to appear in all subjects

available at the time of counseling as per her merit and not to compel the Petitioner to get admission only in degree course of Gynaecology and

Obstetrics. The writ petition was filed on 26th March, 2010 whereas counseling was to start from 11th April, 2010. The Hon''ble Single Judge by

order dated 9th April, 2010 permitted the Petitioner to participate in the counseling in accordance with Condition 3(iv)(b) of the conditions

mentioned in the Brochure which was made subject to decision of the writ petition. The writ petition was subsequently permitted to be amended

permitting the Petitioner to challenge Clause 8(e) of the Notification dated 9th October, 1990 as amended by notification dated 30th March, 1994

and 8th July, 1996 as ultra vires to the Constitution of India.

5. Learned Counsel for the Petitioner, in support of the writ petition, has contended that Clause 8(e) of the notification dated 9th October, 1990

issued by the State Government in exercise of power under Sub-section (5) of Section 28 of the U.P. State Universities Act, 1973 is violaitve of

Article 14 of the Constitution since it restricts a candidate pursuing a post-graduate diploma course in a particular subject from appearing in other

specialities in the subsequent U.P. Post Graduate Medical Entrance Examination. It is contended that Petitioner, who is pursuing a diploma course,

has every right to obtain admission in different specialities according to merit and option as exercised in the subsequent entrance examination. It is

submitted that a candidate who is pursuing diploma course in Medical Colleges in other States selected on the basis of All India Post Graduate

Medical Entrance Examination is not subjected to such condition and he is free to appear in the U.P. Post Graduate Medical Entrance Examination

for different specialities and join a different speciality. Such facility is not permissible to students of State Medical Colleges as per Clause 8(e) and

Brochure 3(iv)(b) which is arbitrary and violative of Article 14 of the Constitution of India. Reliance has been placed by learned Counsel for the

Petitioner on a judgment of Hon''ble Single Judge in Writ Petition No. 286 of 1991 (Rajesh Arora and Anr. v. State of U.P. and Ors.) decided on

21st October, 1991 by which order Clause 8(e) of the notification dated 9th October, 1990 as was existing at the relevant time was quashed and

a direction was issued to the Respondents to give admission to the Petitioners of the aforesaid writ petition according to merit-cum-option on the

basis of result of competitive entrance examination 1991.

6. Sri Mahendra Pratap, learned Counsel for the Respondents, refuting the submissions of learned Counsel for the Petitioner, has contended that

Clause 8(e) as amended by notification dated 30th March, 1994 and 8th July, 1996 does not violate Article 14 of the Constitution of India and the

restriction imposed by the said clause is fully justified. He submits that permitting a candidate pursuing diploma course in a subject to change her or

his speciality on the basis of next examination not only causes financial loss, it would also be against the public interest. Permitting post graduate

diploma students to change the course midway will keep large number of seats of diploma unfilled causing setback to the public interest and

setback to the medical education. It is submitted that insofar as the State of U.P. is concerned, the restriction applies both on the students admitted

in the medical colleges of the State and on the students admitted in private recognized medical colleges through State entrance examination as well

as All India entrance examination. He submits that even according to admission criteria of All India Entrance Examination if according to the

regulations of the University the candidates, who are already pursuing the post-graduate course in their University, are not eligible for admission till

they complete the course and admission is denied there shall be no responsibility of the Admission Agency. He submits that even if the candidates,

who have been admitted on the basis of All India Entrance Examination in other States and they subsequently get admission on the basis of U.P.

Post Graduate Medical Entrance Examination in the State of U.P., they form a different class since they get admission in other State on the basis of

All India quota, in respect of which rules and regulations of such admission the State of U.P. has no control. It is submitted that benefit which has

been extended to the candidates, who are pursuing postgraduate diploma course in Medical Colleges outside the State to take admission in the

same speciality in the degree course in the State of U.P. in pursuance to subsequent examination, the said benefit does not lead to any arbitrariness

or inequality.

7. We have considered the submissions of learned Counsel for the parties and have perused the record.

8. The admission in postgraduate medical course in State medical colleges and the private recognized medical colleges within the State of U.P. is

governed by the Junior Residency Scheme as notified by the State Government order dated 9th October, 1990 in exercise of power under Sub-

section (5) of Section 28 of the U.P. State Universities Act, 1973. Sub-section (5) of Section 28 Clause (b) of the U.P. State Universities Act,

1973 is as follows:

28(5)(b). admission to medical and engineering colleges and to courses of instruction for degrees in education and Ayurvedic or Unani systems of

medicine (including the number of students to be admitted), shall subject to Clause (a), be regulated by such orders (which if necessary) may be

with retrospective effect, but not effective prior to January 1, 1979) as the State Govt. may by notification, make in that behalf:

Provided that no order regulating admission under this clause shall be inconsistent with the rights of minorities in the matter of establishing and

administering educational institutions of their choice:

9. The Government order dated 9th October, 1990 contained a condition in Clause 8(e), which is as under:

8(e). A candidate if admitted to any speciality in post graduate diploma or degree course, he shall not be eligible for admission to any other

speciality in post graduate diploma or degree course. For removal of doubts it is hereby clarified that if any candidate has been admitted to any

speciality in post-graduate diploma course, he may be allowed to be admitted in the same speciality in the post graduate degree course.

10. After the Clause 8(e) was struck down vide judgment of the Hon''ble Single Judge in Dr. Rajesh Arora''s case (supra), Clause 8(e) was

deleted and substituted by Clause 8(h) by Government order dated 30th March, 1994, which is to the following effect:

8(h). A candidate who is admitted to any speciality in a post-graduate diploma or degree course shall be ineligible for appearing at the subsequent

entrance examination for admission to a different speciality until the course in which he has been admitted is completed. Nothing in this Sub-section

shall apply to a candidate who does not join the course to which he is admitted.

11. Further amendment in Clause 8(h) was made by Government order dated 8th July, 1996 deleting earlier Clause 8(h) and substituting following

Clause 8(h):

8(h). A candidate who is admitted in any speciality in a post-graduate diploma or degree course in Government Medical Colleges or K.G. Medical

College, Lucknow shall be ineligible for appearing at the subsequent entrance examination for admission to a different speciality until the course in

which he has been admitted is completed and he is not declared successful but he will be eligible if his resignation is accepted by the Principal of

the College before the date of notification of the examination and has refunded the full amount of salary/stipend received by him during the said

Course. However, nothing in this Sub-section shall apply to a candidate who does not join the course to which he is admitted.

12. The brochure issued for U.P. Post Graduate Medical Entrance Examination-2010 lays down conditions for admission to Post-graduate

courses; Clause 3 provides for ""'Eligibility for Admission"". Clause 3(iv), which has been challenged in the writ petition, is to the following effect:

3(iv) A candidate who has already taken admission on the basis of earlier U.P.P.G.M.E.E./

A.I.P.G.E.E. is not eligible to appear in the examination until he/she completes and passes the course where he/she is presently admitted.

However, such a candidate shall be eligible if (a) he/she has resigned from the said course, his/her resignation has been accepted by the Principal of

the Medical/Dental college or the Vice Chancellor in the case of candidates of CSM Medical University and he/she has refunded the full amount of

salary/stipend received by him/her during the said course, before the date of notification of this examination, i.e. 1.1.2010.

(b) he/she is presently pursuing P.G. Diploma course in any subject, with the condition that he/she will be considered for the Postgraduate Degree

course in that subject only.

13. From the Government order issued u/s 28(5) of the U.P. State Universities Act, 1973, it is clear that Clause 3(iv) of the brochure is in

accordance with the aforesaid Government order. A perusal of the aforesaid restriction imposed by Clause 8(h) indicates that the general

restriction which has been imposed is that a candidate who is pursuing post graduate diploma or degree course in Government Medical Colleges

or K.G. Medical College, Lucknow, shall be ineligible for appearing at the subsequent entrance examination for admission until the course in which

he has been admitted is completed and he is not declared successful. The said general rule is subject to two exceptions, (a) if the resignation of the

candidate is accepted by Principal of the College before the date of notification of the examination and he has refunded the full amount of

salary/stipend received by him during the said course; and (b) he can apply for post-graduate degree course in the subject in which he or she is

pursuing post-graduate diploma course.

14. The Petitioner in this writ petition has come up with the prayer that above restriction being violative of Article 14 of the Constitution of India be

struck down and she be permitted to take admission in any other speciality apart from one in which she is pursuing her diploma course on the basis

of her merit and option exercised in the subsequent entrance examination.

15. The question for consideration is as to whether the restriction is violative of any rights of the Petitioner of equality as guaranteed under Article

14 of the Constitution of India. The reasons, which has been given by the State for imposing the aforesaid condition, have been explained in

paragraph 15 of the supplementary counter affidavit of Dr. K.C. Rastogi, Additional Director of Medical Education dated 14th April, 2010. In

paragraph 15 of the supplementary counter affidavit following reasons have been given:

15. That, the prohibition contained in the brochure is in consonance with the notification dated 9.9.1990 as amended on 30.3.1994 & 8.7.1996.

The amended notification has been brought on the basis of the experience gained and the direction of this Hon''ble Court and also requests made

by the students. The prohibition has been created to curb an unfair practice of leaving a course of one speciality mid-way and joining another

speciality on the basis of the subsequent Entrance Examination. The State Govt. found that this practice has resulted in serious financial loss to the

Govt. and also resulted in unfairness and disadvantage to those who could not join the course as the candidate who secured better merit opted to

join. Such practice has also not been found in public interest and only to curb this practice, prohibition has been provided in the Brochure on the

basis of the notification mentioned above. It is also pointed out that bar is also not absolute, it only regulates and compels the candidates to

complete the course which he joined on the basis of the option exercised by him. Such terms and conditions which are regulatory in nature cannot

be termed to violative of Article 14 & 21 of the Constitution of India. If Petitioner wants to improve his merit for purpose of joining another

speciality, the opportunity may be availed after completing the course. The Medical Colleges are run and maintained at the public expense. The

prime object is the public service. If this kind of migration from one course to another course is allowed to be resorted to appearing in further

examination, it shall highly prejudicial to the medical education. If a candidate allowed to leave the course mid way, the seat on which he was

allowed admission on the basis of the earlier examination shall remain vacant for remaining period of the course as no admission can be granted at

that advance stage of the course. The principal object behind the prohibition is that candidate joined a particular speciality must complete that

course. There is no violation of the Article 14 of the Constitution of India.

16. The State Government as per statutory power given u/s 28(5) of the U.P. State Universities Act, 1973 is entitled to regulate the terms and

conditions of admission to post-graduate medical course. The restriction, which has been imposed, is due to valid reasons as explained in

paragraph 15 of the supplementary counter affidavit 14th April, 2010, as quoted above.

17. Every speciality in a medical discipline has its own importance and is relevant for health of a person. Having skilled persons in every discipline

in medical science is in the interest of general public. The seats in post-graduate diploma courses and degree courses in medical colleges are

limited. The teacher taught ratio as per regulation of the Medical Council of India for post-graduate courses is 1:1. For running post-graduate

medical courses, the State also provides stipend to all the students. It is in the interest of the State that all candidates who takes admission in

diploma course should complete the course, permitting the students pursuing diploma courses to leave diploma courses in midway shall affect both

State exchequer as well as interest of the medical colleges where they are pursuing the course and the general interest of the public. The seats

which are vacated in midway cannot be filled and shall remain unfilled which is not in public interest looking to the need and scarcity of qualified

post-graduate doctors. Leaving the seats in midway shall also affect the rights of candidates who could not get admission and were next lower in

merit. Thus the restriction imposed by the State cannot be said to be arbitrary or violative of rights guaranteed under Article 14 of the Constitution

of India.

18. It is to be noted that there is no complete prohibition in doing the post graduate course in another speciality. A candidate after completing the

course can very well compete for different speciality and take admission. Learned Counsel for the Petitioner sought to contend that two

exceptions, which have been created in the aforesaid general restriction frustrate the object since in case of acceptance of resignation as well as in

permitting the degree course in the same speciality for a diploma student, the result is the same, i.e. leaving the diploma seat midway. The

exceptions which have been created by the State are to give limited benefit to the students and are in the interest of the student. The exceptions are

permitted only in few cases where the conditions are fulfilled and the exception does not completely annihilate the general restrictions and may form

only a small percentage. Moreso, the Petitioner has principally come up in the writ petition praying for quashing the restriction in taking admission in

different speciality.

19. Learned Counsel for the Petitioner has laid much emphasis on the fact that hostile discrimination in violation of Article 14 of the Constitution of

India takes place since the students who have passed M.B.B.S. from State Medical Colleges and have taken admission on the basis of All India

Post Graduate Medical Entrance Examination in different States are not bound by such restriction of taking admission in same speciality on the

basis of subsequent U.P. Post-graduate Medical Entrance Examination. It is relevant to note that students pursuing the course in another State after

taking admission through All India Post-graduate Medical Entrance Examination are governed by different set of rules framed by the Government

of India and the respective State where such institutions are situate. As far as State of U.P. is concerned, the restriction applies to the students

pursuing their courses in the State Medical Colleges after obtaining admission both on the basis of U.P. Post Graduate Medical Entrance

Examination as well as All India Entrance Examination.

20. The Government order issued by the State of U.P. in exercise of power u/s 28(5) of the U.P. State Universities Act, 1973 and the brochure of

admission issued accordingly regulate admission to post-graduate courses in the State Medical Colleges and the Private Recognized Medical

Colleges in the State of U.P. These rules do not regulate admission of the students in other States on the basis of All India Entrance Examination.

The students, who have taken admission on the basis of All India Entrance Examination and have joined other States form a different class. The

classification is founded on an intelligible differentia and the differentia is in relation to the object sought to be achieved. The State of U.P. which

has control over admission to be made in the Medical Colleges in the State of U.P. with the object, as noted above, has put reasonable restriction

in the matter of admission. It is also relevant to note that even in All India Post-graduate Medical Entrance Examination-2010 the eligibility criteria

as contained in Clause 4(i), is to the following effect:

4. ELIGIBILITY CRITEIRA....

(i) Some of the Universities are having regulations that candidates who are already pursuing the PG Course in their University or in another

University are not eligible for admission till they complete the course. The candidates who are already pursuing PG Courses either through All India

Quota or State Quota and are applying for a seat under All India Quota may confirm the eligibility conditions of that University in this regard. Dte.

GHS shall not be responsible if such candidates are refused admission. Such candidates may opt for the subject and the college at their own risk

and cost.

21. The above clause of the eligibility criteria of All India Entrance Examination also recognizes restriction in admission regarding students who are

pursuing a post-graduate course. All India eligibility criteria recognizes that if in the concerned University there is any restriction qua the student to

complete the diploma course before admission to any other speciality, he may not be admitted in different speciality. The denial on the said ground

cannot be complained. Thus even All India Entrance Examination recognizes the restriction which has been substantially imposed by the State of

U.P.

22. In the counter affidavit it has also been mentioned that in some other States there are also restrictions with regard to admission in different

subjects in the post-graduate courses on the basis of subsequent examination. In paragraph 16 of the counter affidavit reference has been

specifically made to the Post Graduate Medical Entrance Examination-2010 of Gujarat and Punjab Universities. In Gujarat University restriction is

to the effect that a candidate who is currently engaged in post-graduate medical studies is not eligible before completion of the course to admission

in any speciality. The conditions as referred, are quoted below:

A candidate who is currently engaged in P.G. medical studies in Gujarat University or any other University or equivalent body is not eligible. On

completion of the course that is after passing the University exam for that course, he/she becomes eligible for another P.G. medical course. A

candidate, who, in the past, selected and admitted to any P.G. medical course of this or any other University or any equivalent body and did not

complete that course that is, if the candidate has not cleared the University examination of that course, is not eligible.

23. Insofar as Punjab University is concerned, there is more stringent clause i.e. if a candidate is admitted to the Post-graduate Medical Course

and leaves before completion of full period, he shall be debarred for next three years from admission to any post-graduate course. The conditions

as referred, reads as under:

Important notes: If a candidate admitted to the course, leaves before completion of full period he/she shall be debarred for next 3 years from

applying for admission to any PG course in GMCH. Candidates in employment of govt./semi govt./autonomous bodies/corporation must submit

their application form through their employer or produce no objection certificate from/through their employer on or before the last date of receipt

of application forms.

24. Thus the conditions, which have been imposed in the State of U.P. as compared to the above conditions is not that strict.

25. It is relevant to notice a recent judgment of the Apex Court in the case of Dr. Gulshan Prakash and Others Vs. State of Haryana and Others,

In the said case the State of Haryana did not provide for reservation in post-graduate courses of MD/MS/PG diploma and MDS. Writ petitions

were filed under Article 32 of the Constitution of India before the Apex Court challenging the said order. It was contended that in the in the All

India Entrance examination reservation has been provided for same courses, hence the State of Haryana be also commanded to provide

reservation. Repelling the aforesaid contention, following was laid down in paragraphs 23 and 24 of the said judgment:

23. Learned Counsel for the Appellants next contended that, inasmuch as even in All-India Entrance Examination for Post-Graduate Courses, the

Government of India itself has made a provision for reservation for SC/ST candidates, the State of Haryana is bound to follow the same and issue

appropriate orders/directions providing reservation in the Post-Graduate Courses. He further contended that the prospectus de hors any provision

for reservation is bad and is liable to be quashed.

24. In our view, this contention is also liable to be rejected. It is true that Government of India itself has made a provision for reservation of SC/ST

categories. This was a decision by the Government of India and it is applicable in respect of All-India Entrance Examination for MD/MS/PG

Diploma and MDS Courses, and reservation for SC/ST candidates in All-India quota for PG seats. However, the same cannot automatically be

applied in other selections where State Governments have power to regulate.

26. It is clear from the above pronouncement that the condition of admission where the State has power to regulate has to be examined on the

basis of the regulations of the State and any other condition for admission provided in the All India Medical Entrance Examination shall not be

automatically attracted.

27. The Apex Court had the occasion to consider restrictions as contained in Civil Services Examination Rules, 1990 with regard to candidates

who had already been selected qua appearance in the next examination or to opt for other service in the case of Arti K. Chhabra and others Vs.

Union of India and others, Before the Apex Court the validity of proviso to Rule 17 of the Civil Services Examination Rules, 1990 was challenged

on the ground that it violates Article 14 of the Constitution of India. The said proviso contained certain restrictions with regard to candidates'' right

to appear in the next examination and change to other service as compared to one in which they have already been selected. It is useful to quote

paragraphs 7, 8 and 9 of the said judgment whereby the Apex Court repelled the contentions that restrictions being violative of Article 14 of the

Constitution of India, are discriminatory in nature. The relevant paragraphs of the judgment read as follows:

7. The attack against the second proviso to Rule 17 of the 1990 Rules is based, as we have pointed out above, on two grounds. The first is that

the restriction on the horizontal mobility from one service of Group ''A'' to another service in the said Group, by itself is unreasonable and arbitrary.

Secondly, while it permits those who are selected for I.P.S. to move to any Service in Group ''A'', those who are selected in any Service in Group

''A'' are prevented from doing so. Hence, there is a discrimination between the candidates selected for I.P.S. and those selected for any of the

Group ''A'' Services.

8. We are not impressed by either of the said contentions. As regards the first contention, the restriction is eminently justified since, as has been

pointed out on behalf of the Respondents, all Services in Group ''A'' stand at par with each other. Hence, there is no question of bettering

prospects or seeking an upward mobility when a candidate wants to move from one service in Group ''A'' to another service in that Group.

Further, if those who are appointed to any of the Group ''A'' Services which are as many as 45, are allowed the mobility, a large number of posts

would remain unfilled at any particular point of time resulting in a chaos in the administration. The contention that this will be the case even when the

candidates appear for the next examination for upward mobility loses sight of the fact that the posts in I.A.S., I.F.S. and I.P.S. are limited in

number compared to those in Group "A" services and those selected for the I.A.S., I.F.S. and I.P.S. are few. The dislocation on that account is

thus marginal if any. What is more, there is no absolute restriction on a candidate selected to any of the services in Group "A" from moving to any

other service in the same Group. The only condition is that if he does so, he has to resign from that Service before he appears in the next

examination. For these reasons, we are of the view that the restriction placed on the said mobility cannot be said to be either unreasonable or

arbitrary.

9. As regards the discrimination between the candidates appointed to I.P.S. and those appointed to any of the Group "A" Services, it must be

remembered that from the very inception the Services were classified into following three categories:

Category I -I.A.S. and I.F.S. Category II -I.P.S. and Class II Police Service s Category III -Central Civil Services, Class I and Class II [now

Group "A" & " B"]

According to the Examination Scheme in force prior to 1979, a candidate who opted for I.A.S./I.F.S. was required to appear in two additional

optional subjects of Master"s Degree standard in addition to three optional subjects and the compulsory subjects of General English, Essay and

General Knowledge. The candidates opting for Central Services [Category III above] were not required to appear in the additional optional

subjects; they were required to appear only in three optional subjects in addition to the compulsory subjects. The candidates competing for the

I.P.S. were required to appear in two optional subjects only in addition to the compulsory subjects. Apart from the two additional subjects, higher

marks were prescribed in the viva-voce examination for candidates competing for I.A.S. and I.F.S. The maximum marks prescribed for

candidates competing for I.A.S. and I.F.S. were 400 whereas the maximum marks for viva-voce in the case of candidates competing for other

services were only 300. There was a single unified examination for recruitment to different services. In the case of candidates allocated to the

I.P.S., they were and are allotted to particular States and they have to spend their entire career in the State to which they are allotted except when

they are on deputation to the Government of India. As far as other Services are concerned including Industrial Security Force and Railway

Protection Force, being Central Services, the candidates appointed to them get transferred/posted anywhere in the country. It is, therefore, felt

necessary to give an option to those who are selected for I.P.S. to consider the conditions in the State to which they are allocated, and not only to

move upward but also to any Service in Group "A" and have an opportunity to be a member of a Central Service, if so desired. It is also possible

that the I.P.S. candidate may not like the State-cadre which is allotted to him in which case, unless he is provided with the mobility as is done by

the proviso to the impugned Rule 17, he would remain vegetating. That would affect the efficiency of administration. Further, the I.P.S. has very

little in common with the other services and they stand on different footing. It is for this reason that he is not only given upward mobility but also

mobility towards the less favored services when he can opt for the Category III service which compared to I.A.S., I.F.S. and I.P.S. is certainly

less prized.

28. We may now consider the judgment of this Court in the case of Rajesh Arora (supra) which had struck down Clause 8(e) as it existed at the

relevant time. In Rajesh Arora"s case (supra) following was laid down in paragraph 9:

9. From a perusal of the Government notification dated October 9, 1990 which has statutory base u/s 23(5), empowering the State Government to

regulate admission, it will appear that it satisfied the test that equal opportunity should be provided to all concerned seeking admission to post-

graduate medical degree and diploma courses by enabling them to appear in the competitive entrance examination which may be held for the

purpose. It also provides that admission to the medical colleges shall be made according to merit-cum-option on the basis of the result of such

examination. But this provision has been made in regard to some of the candidates and those who have appeared in any previous examination and

have already been admitted in any speciality have been put in a different class and have been denied the benefit of that provision. It has been

declared that a candidate, if admitted to any speciality in post-graduate diploma or degree course shall not be eligible for admission to any other

speciality in post-graduate diploma or degree course. This cuts at the root of the right of such candidates to equal opportunity in the matter of

appearing in the entrance examination and getting admission on the basis of merit-cum-option. If this was the real intention of the State

Government, then there was no use permitting the candidate to appear in the subsequent entrance examination. The bar should have been clearly

laid down. By allowing him to appear in the examination and then denying him the right to enjoy the fruit of the examination are some thing

inconsistent with each other. The provision in substance and effect is that a person who has already been admitted to any speciality should not take

chance in the subsequent examination and even if he appears he will not be given admission in any other speciality according to merit-cum-option

on the basis of the result of the examination. The second test that the most meritorious students should be given admission in the medical colleges

has not been satisfied. The impugned provisions of Clause 8(e) have no nexus with the object of the statutory scheme. They are, therefore, clearly

unreasonable and violative of Article 14 of the Constitution.

29. The Hon''ble Single Judge in the aforesaid judgment took the view that the candidates who appeared in earlier entrance examination and had

taken a course were discriminated with those students who had failed in the earlier examination and had appeared in subsequent examination. The

Hon''ble Single Judge has held that this cuts at the root of the right of such candidates to equal opportunity of appearing in the entrance examination

and getting admission on the basis of merit-cum-option. The Hon''ble Single Judge has failed to consider that candidates who were declared

successful in the entrance and are pursuing a course are in different class with those students who had appeared but failed and could not get

admission. The persons who are pursuing a course can be subjected to different restrictions in the matter of future admission. They form a separate

class vis-a-vis those candidates who fail and seek admission afresh by appearing in the subsequent entrance examination. We do not subscribe to

the view taken by the Hon''ble Single Judge in Rajesh Arora''s case (supra).

30. After the aforesaid judgment Clause 8(e) was amended and substituted by 1994 and 1996 amendments.

31. In the case of Dr. Sanjay Sharma v. Director General, Medical Education reported in 1996 (28) ALR 522, the writ petition was filed by

certain students who have appeared in the U.P. Post Graduate Entrance Examination 1996 who were aggrieved by Class-(iii) in the brochure

which contained a prohibition as brought by Clause 8(h) of the notification issued by the State. The Hon''ble Single Judge in the said judgment

upheld the said clause. While considering the Clause 8(e) as amended by notification of the year 1993 and 1994 following was laid down by the

Hon''ble Single Judge in the said judgment:

From a perusal of the aforesaid Clause (e) it is clear that the prohibition was against admission in any other speciality. The fact that this bar was not

advertised or was not mentioned in the advertisements or Brochure of U.P.P.G.M.E.E. of 1993 does not make any different as the admissions to

the Post Graduate Diploma and Degree Course are governed by the aforesaid Government Order. The Entrance Examination is conducted for

admission to Post Graduate Diploma or Degree course. This prohibition has been amended and modified by the Government orders dated

30.6.1993 and 30.3.1994. Clause (h), as it now stands, has already been reproduced in the earlier part of this judgment. In my opinion, the

prohibition is not complete and it is only regulatory. A candidate on the basis of the merit secured in the Entrance Examination exercises his option

to join a particular speciality and once it has been done, he should stick to that. It cannot be denied that a lot of money is spend in maintaining these

courses and the candidates who join such courses are paid handsome salary. In counter affidavit it has been stated that such candidates are paid

Rs. 6000/-per month as salary besides other expenses. They are provided facility of residence and studies etc. If the candidate is allowed to leave

the course midway, certainly it shall be against the public interest. Further, speciality in medical science, whether it is clinical or non-clinical, plays

an important role in maintaining the health and preserving the life of human being. So far as society is concerned, every speciality has the same

value. The candidates may have likings or disliking for different specialities but their importance cannot be minimized on the basis of their likings

which are mainly based on the prospects for future life. The medical colleges are run and maintained at the public expense. The prime object is the

public service. If this kind of jumping from any one course to another course is allowed to be resorted to by appearing in further examination, it

shall be highly prejudicial to the medical education. The disadvantage may be considered from another angle also. If a candidate is allowed to lave

the course midway, the seat on which he was allowed admission on the basis of the earlier Entrance Examination shall remain vacant for remaining

period of the course as no admission can be granted at that advanced stage of the course. Such a practice, if allowed to be pursued, will not be of

any advantage to any body. In my opinion, the prohibition contained is regulatory and does not in any way violate the provisions contained in

Articles 14 and 21 of the Constitution of India.

32. It is true that judgment in Dr. Sanjay Sharma''s case (supra) did not notice the earlier judgment in Dr. Rajesh Arora''s case (supra) and due to

that reason the said judgment cannot be said to be binding authority but in view of the fact that we have taken a view disapproving the view

expressed by the Hon''ble Single Judge in Dr. Rajesh Arora''s case (supra), the view expressed by the Hon''ble Single Judge in Dr. Sanjay

Sharma''s case (supra) has to be approved.

33. Learned Counsel for the Petitioner also tried to contend that there is discrimination since the bar does not apply to students who are pursuing

their course in private medical colleges. A categorical stand has been taken by the learned Counsel for the Respondents that bar clearly applies to

both categories of students who are pursing their courses in State Medical Colleges and those admitted in recognized private institutions. He

submits that in the Government order mention of private institutions was not made since at the relevant time there was no recognized private

medical colleges in the State of U.P. In view of the categorical stand taken by the learned Counsel for the Respondents, it is held that restriction

applies to both the categories of students i.e. those pursuing their course in Government medical colleges as well as students pursuing their course

in recognized private medical colleges.

34. On submission being made by learned Counsel for the Petitioner that State should either come up with total restriction prohibiting any diploma

students to take subsequent examination for admission to post-graduate courses or may altogether remove such restriction, learned Counsel for the

State has submitted that State shall consider this aspect and if necessary the conditions shall be suitably amended. It is always open for the State to

amend the conditions for regulating the admission to post graduate medical courses in colleges and issue suitable amendments as required from

time to time. No direction is needed in that regard.

35. In view of the foregoing discussions, we answer the referred questions as under:

(1) The decision of Hon''ble Single Judge in Dr. Rajesh Arora''s case (supra) does not lay down the correct law whereas the judgment of Hon''ble

Single Judge in Dr. Sanjay Sharma''s case (supra) lays down the correct law.

(2) Clause 8(h) of the notification dated 9th October, 1990 as amended by notification dated 8th July, 1996 restricting candidates admitted to the

diploma courses from seeking admission in the same speciality in the degree course in the subsequent year to the exclusion of all other degree or

the diploma courses is not violative of Article 14 of the Constitution of India.

36. Let the writ petition be listed before the Hon''ble Single Judge for final decision.