

DR. HARIHAR PRASAD SINGH AND ORS. A  
v.  
PRINCIPAL, M.L.N. MEDICAL COLLEGE ALLAHABAD  
AND OTHERS.

AUGUST 21, 1990

[S. RANGANATHAN AND K.N. SAIKIA, JJ.] B

*Professional Colleges—Admission to: Residency Scheme—Clause 5—Motilal Nehru Medical College—Admission to P.G. Course—‘Us samay’ interpretation.*

The appellants are junior doctors who were in a house job on 22.8.1989. They had been admitted to post-graduate degree course (second year) in the M.L.N. Medical College under the “Residency Scheme” for junior doctors, which was notified on 22.8.1989 but was given retrospective effect from 1.8.1987. They, however, lost their seats as a result of the High Court’s decision allowing the writ petitions filed by the respondent-doctors whose applications for admission to the same course had been rejected. C  
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The modifications introduced by the Residency Scheme needed certain transitory provisions being made for two purposes. The first was to devise a formula of equating between the old and the new systems. This was done by redesignating all students, junior doctors, house officers and others in position in the manner set out in para 5 of the scheme. The second provision necessary was in regard to their admission to the post-graduate courses. This was done by the second sub-para of para 5. E

The respondent-doctors who had done their M.B.B.S., internship and house-job by April 1988 and who had even obtained admission, in March 1989, into a diploma course, sought admission in the M.L.N. College into the second year of a degree course by taking advantage of clause 5 of the Residency Scheme. Their applications were rejected on the ground that the clause 5 of the scheme was a transitory provision intended to benefit only persons who were on a house job as on 22.8.1989; they alone could take advantage of the scheme as soon as they completed the house job; and not persons who had completed their house-job much earlier to that date. Thereupon, these doctors filed writ petitions in the High Court. A Division Bench of the High Court allowed the petitions and held that clause 5 extended the privilege of admission to F  
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A the second year of the degree course to all persons who were working as house-officers on or after 1st August, 1987.

B The State as well as certain doctors who were in house-jobs as on 22.8.1989 and who had been admitted to post graduate degree courses on the basis of the State's interpretation of the scheme but lost their seats as a result of the High Court's decision, have preferred these appeals.

C So far as the present appeals are concerned, all parties have proceeded on the footing that the residency scheme is a valid one and that it envisaged that a person who had completed house-job for one year could get admission into the second year of the course (whether degree or diploma). The only controversy is whether this admission was open only to those persons who were in a house-job as on 22.8.1989 and had completed it before 30.10.1989.

D Dismissing the appeals, this Court,

E HELD: (1) There is no rule which prohibits a person (even though he may already be a student in a post-graduate course) from seeking admission to the second year of junior residency, the eligibility clauses for admission to which he fulfills. The High Court was, therefore, right in holding that they could not be excluded from consideration for admission to the second year of the degree course merely because they were already students in a diploma course. [901H; 902A-B]

F (2) To ask persons, who had already completed a one year house job, to undergo the three year degree/two year diploma course would be a severe handicap to them as, earlier, they could have got their post-graduate degree/diploma course after two years/one year. In order to adjust them into the new scheme the State designated holders of house jobs as "junior residents (first year)" under the new scheme. This enabled the holders of house-jobs to get into the second year course under the residency scheme. [902H; 903A]

G (3) The scheme, however, could not be stretched and converted into a limitless provision making it possible for all persons who had completed their house jobs at some distant past to compete for admission to the second year of the degree course. That is why para 5 limited the scope of the redesignation and admission. The first part of it limited the equation only to persons who were working on house-jobs since  
H 1.8.1987. [903B-C]

(4) The date material for the purpose of their admission was 30.9.1989, the last date by which the applications had to be sent in. That being so, the words “*us samay*” used in the second sub-para of para 5 are the operative words. They clearly embody a reference to an anterior point of time and this can only be a reference to the period since 1.8.1987 which finds specific mention in the first sub-para and which is the period subsequent to the scheme coming into operation. [905D-E]

(5) All persons doing house jobs after 1.8.1987 are covered by the second sub-para of para 5. The words “after completion of the tenure” had to be used here because the class of persons referred to also included those who were in house jobs as on 22.8.1989. [905F]

(6) It is clear that the words “House Officer”, “Junior Residents” and “Senior Residents” used against serial Nos. 1, 2 and 3 in para 5 of the scheme redesignate all such officers working since 1.8.1987 as “junior residents—1st, 2nd and 3rd year” respectively. That being so, both the writ petitioners as well as the appellants are all “junior residents (1st year)” and should be eligible for admission to the second year of the residency scheme course. [903D-E]

(7) It is clear from the judgments of the High Court on the subject that the interpretation of the clauses on the scheme is by no means an easy task. In this state of affairs, it is upto the State to find out a practical solution to ensure that the student community is not prejudiced by the ambiguities in the scheme. [909H; 910A]

*Mridula Avasthi and Others v. University of Delhi and Others*, [1988] 3 S.C.R. 762, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4329-38 of 1990.

From the Judgment and Order dated 30.5.1990 of the Allahabad High Court in C.M.W.P. Nos. 18102, 18036, 22161, 22836 and 22877 of 1989.

Kapil Sibal, Additional Solicitor General, Satish Chandra, Ms. Shobha Dixit, Pradeep Mishra, R.K. Virmani, Gopal Subramaniam, Harish N. Salve and D.K. Garg for the appearing parties.

The Judgment of the Court was delivered by

A RANGANATHAN, J. We have come to the conclusion that the High Court's decision under appeal has to be upheld. But, as the question raised is one of importance and difficulty, we have heard the counsel at length. We grant leave in all the petitions and proceed to give the reasons for our conclusion in detail.

B Both sets of appeals are the off-shoots of a "Residency Scheme" for junior doctors introduced in the State of U.P. and they can be conveniently disposed of by a common order.

C In the State of U.P., post-graduate courses in medicine were of two types: degree and diploma. The duration of the degree course was two years and that of the diploma course, one year. The minimum requirement for admission to a post-graduate course (whether degree or diploma) was that the candidate should have passed the M.B.B.S. degree examination, then done one year's internship and then done a house job for one year.

D The "Residency Scheme" was notified on 22.8.89. This was the culmination of a long period of agitation by junior doctors in the State for better emoluments and conditions of service. This scheme was given retrospective effect from 1.8.1987, for para 8 of the scheme says: "The above residency scheme shall be deemed to have been enforced from 1st August, 1987". Under the scheme, every candidate selected  
E for a post-graduate degree course would have a tenure of three years which would also be the tenure of the course itself. All such candidates were to be called Junior Residents—1st year, 2nd year and 3rd year respectively during their tenure. Each candidate selected for post-graduate diploma course would have a tenure of two years which would also be the tenure of the course and all such candidates were to  
F be called Junior Residents—1st year and 2nd year respectively. In other words, the duration of the degree course was raised to three years and that of the diploma course to two years. However, simultane-  
G ously, the eligibility requirement of one year's experience in a house-job was dispensed with, the net result being that the total period needed, after taking a M.B.B.S. degree, to acquire a post-graduate degree/diploma remained the same as before.

H The modifications introduced by the new scheme needed certain transitory provisions being made for two purposes. The first was to devise a formula of equation between the old and the new systems. This was done by redesignating all students, junior doctors, house officers and others in position in the manner set out in para 5 of the

scheme. The original notification is in Hindi but a free translation of the first part of the above para, as set out in the judgment of the High Court, reads thus:

“Upon enforcement of the above Residency Scheme, all the House Officers, Junior Residents 1st year working since 1st August, 1987 and similarly working all Juniors Doctors (“all junior doctors similarly working” is perhaps a better translation) shall stand converted to the following new designation propose in the residency:

S. No.	President designation	Designation upon enforcement of residency scheme.
1.	House Officer/Demonstrator, 1st year.	Junior Resident 1st year.
2.	Junior Resident/RMO 1st year/ RSO 1st year/RGO 1st year/ Demonstrator 2nd year/P.G. degree student 1st year/ P.G. Diploma student 1st year.	Junior Resident 2nd year.
3.	Senior Resident/RMO 2nd year/ RSO 2nd year/RGO 2nd year/ Demonstrator 3rd year/ Registrar/P.G. Degree students 2nd year.	Junior Resident 3rd year.

The second provision necessary was in regard to their admission to the post-graduate courses. This was done by the second sub-para or para 5 which ran thus:

“At the same time (“*Iske sath hi sath*”) the admission and registration of the House Officers, working at the time (“*us samay*”) to post graduate courses (degree/diploma course) shall be done after completion of their tenure and on the basis of their merit at M.B.B.S. and house-job”.

[Words in brackets give the original Hindi expressions used; emphasis added by us.]

A The provisions of the scheme do not explicitly say that the category of persons dealt with under the second sub-para above will be admitted to the *second year* of the degree course (junior resident—2nd year) of the residency scheme on the basis of *inter-se* merit. A somewhat different line of thinking seems to have been adopted by the High Court in *Dr. Sandeepa Srivastava's* case (to which we will be referring later). But, so far as the present appeals are concerned, all parties have proceeded on the footing that the scheme is a valid one and that it envisaged that a person who had completed house-job for one year could get admission into the second year of the course (whether degree or diploma). The only controversy is whether this admission is open only to those persons who were in a house-job as on 22.8.89 and completed it before 30.10.1989 (hereinafter referred to as 'the appellants') or to all persons who had been in a house job on or after 1.8.87. The question arose when a number of doctors (hereinafter referred to as 'the writ petitioners') who had done their M.B.B.S., internship and house-job by April, 1988 and who (save for one) had even obtained admission, in March 1989, into a *diploma* course sought admission in the Motilal Nehru Medical College at Allahabad ('M.L.N. College', for short) into the second year of a *degree* course in the same or a different speciality by taking advantage of clause 5 of the residency scheme. Their applications were rejected on the ground that the relevant clause of the scheme was a transitory provision intended to benefit only persons who were on a house job as on 22.8.1989. They alone could take advantage of the scheme as soon as they completed the house job; not persons who had completed their house-job much earlier to that date. The writ petitioners went to Court and this time they were successful. A Division Bench of the Allahabad High Court held, interpreting rule 5, that rule 5 extended the privilege of admission to the second year of the degree course to all persons who were working as house-officers on or after 1st August, 1987. The State, as well as certain doctors who were in house-jobs as on 22.8.89 and who had been admitted to post graduate degree courses on the basis of the State's interpretation of the scheme but lost their seats as a result of the High Court's decision, have preferred these appeals.

G Four questions arose for the consideration of the High Court—

(1) Is the concession contemplated by rule 5 of the scheme limited only to doctors in house jobs as on 22.8.89 or available to all those who were in house jobs as on 1.8.87 and later?

H (2) Is a candidate who has already been admitted to, and is

undergoing a diploma course eligible to seek admission to a degree course under rule 5? A

(3) Is it open to a candidate who is a student in a post-graduate diploma course in one speciality to seek admission to the post-graduate degree course in any particular speciality? B

(4) Is it permissible for a candidate who is undergoing a diploma course to abandon it in the middle and join a degree course? B

The High Court expressed no opinion on the latter two questions leaving it to the Principal of the College to decide the same in due course but answered the first two questions in favour of the writ petitioners. We are concerned here only with these two questions. C

We may take the second of these questions first. The writ petitioners say that a direct answer to this question is provided by a notification issued on 13.8.87 by the Governor of the State in pursuance of the provisions of Article 348 of the Constitution read with S. 28(5) of the Uttar Pradesh State Universities Act (Act X of 1973), as amended Act 29 of 1974. This notification effects an amendment to an earlier notification dated 15.12.1982 (as subsequently amended) by adding a new para thereto. The new para provides: D

“(7A) If any candidate has been admitted in post graduate Diploma or Degree Course in one speciality he shall not be eligible for admission in Post Graduate Diploma or Degree Course in any other speciality. For removal of doubts it is clarified that if a candidate has been admitted in Post Graduate Diploma Course in one speciality he may be allowed admission in Post Graduate Degree Course in that very speciality.” E F

If this is correct, there can be no doubt that none of the writ petitioners can be denied registration and consideration for admission to the degree course merely on the ground that he has earlier been admitted to a diploma course in some speciality. It is urged on behalf of the appellants that this rule has lost its force on the promulgation of the new scheme. It is difficult to see why this should be so because its principle could be applied, *mutatis mutandis*, to the residency scheme as well. But even if this is correct and this para is kept out of consideration altogether, there is no rule which prohibits a person (even though he may already be a student in a post-graduate course) from seeking H

- A admission to the second year of junior residency, the eligibility clauses for admission to which he fulfills. The High Court was, therefore right, while expressing no view on the question whether any of the writ petitioners are eligible to be admitted to any particular speciality, in holding that they could not be excluded from consideration for admission to the second year of the degree course merely because they
- B are already students in a diploma course.

- The first question, however, is a more difficult one. We have considered the contentions of both sides carefully and we have come to the conclusion that there is no reason to disturb the High Court's conclusion. Prior to the enforcement of the scheme, all candidates who had completed their M.B.B.S. together with one year of internship and one year of house job were eligible for admission to a post-graduate degree or diploma course and a particular candidate could make repeated attempts for being considered for admission to a particular post graduate speciality, irrespective of the batch to which he belonged or the particular year in which he was admitted to the
- C M.B.B.S. course or the particular year in which he passed the final M.B.B.S. examination. That liberty is available after the introduction of the new scheme also to all M.B.B.S. graduates who have completed one year of internship. Irrespective of the year in which they qualified in the M.B.B.S. degree examination, it is open to all such candidates to seek admission to the first year of the new three-year degree/two year
- D diploma course. That is not in dispute. The question only is whether any of them are entitled to claim admission in the *second year* of that course on the ground that they had also completed their house-job earlier. The answer to this question must depend on the interpretation of—the none too clear—para 5 of the Residency Scheme.
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- F In interpreting the scheme, it is first necessary to point out that the preamble to the notification sets out a two-fold objective of prescribing a policy/procedure (a) for the conversion of the existing designations in the departments to equivalent designations and (b) for specification of the number of seats for various degree/diploma courses and for “eligibility examination for selection thereon”. [sic: apparently, this should read: “eligibility, examination or selection thereto”.] One further important factor to be borne in mind is that the scheme was given effect to from 1.8.87. To ask persons, who had already completed a one-year house job, to undergo the three year degree/two year diploma course would be a severe handicap to them as, earlier, they could have got their post-graduate degree/diploma
- G after two years/one year. In order to adjust them into the new scheme
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the State designated holders of house jobs as “junior residents (first year)” under the new scheme. This enabled the holders of house-jobs to get into the second year course under the residency scheme. It has been stated, in the appellants’ rejoinder, that a large number of candidates who had completed their M.B.B.S. even ten years earlier and some candidates who were even on the verge of completing a post-graduate degree course had applied for registration as junior residents (2nd year) along with the appellants and the writ petitioners. This kind of situation would be impractical. Obviously, the scheme could not be stretched and converted into a limitless provision making it possible for all persons who had completed their house jobs at some distant past to compete for admission to the second year of the degree course. That is why para 5 limited the scope of the redesignation and admission. The first part of it limited the equation above referred to only to persons who were working on house-jobs since 1.8.1987. The High Court was clearly right in saying that the words “1st year” used in column of the table in para 5 against serial No. 1 govern only “demonstrator”. It is clear that the words “House Officer”, “Junior Resident” and “Senior Resident” used against serial Nos. 1, 2 and 3 redesignate all such officers working since 1.8.87 as “junior residents—1st , 2nd and 3rd year” respectively. That being so, both the writ petitioners as well as the appellants before us are all “junior residents (1st year)” and should be eligible for admission to the second year of the residency scheme course.

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But, it is said, this cannot be, for two reasons. One is that the second sub-para of para 5 is restricted only to those who were House Officers on 22.8.89. We think that this contention has been rightly repelled by the High Court. To accept this construction would mean a segregation of the two parts of para 5 and the substitution of the words “on 22nd August 1989” for the words “since 1st August 1987” used in the first para of para 5. The words “*us samay*” clearly establish a nexus between the two parts of para 5 and can only refer to the period referred to in the first part viz. “since 1st August 1987”. It is difficult to see how a reference to two different periods could have been intended by the two parts of para 5. That this could not be so is also clear for the scheme, though announced on 22.8.89, was to be effective from 1.8.1987. That is why a line is drawn as on that date and all persons who are working as house officers, junior resident doctors or senior resident doctors since that date are all assimilated into the new scheme. There is no justification to read such assimilation as partial, as contended for by the State. It was contended that the scheme was the outcome of negotiations with junior doctors in the State who were

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- A agitating for better conditions of service and higher emoluments and that the settlement with them was only that higher emoluments will be paid w.e.f. 1.8.87. Necessary material to substantiate this plea was not placed before the High Court or before us. But even assuming that the negotiations and agreement had a limited scope, we have to interpret the scope of para 5 on its language. The reference to the period since
- B 1.8.1987 in para 5 fits in with the declaration in para 8 that the scheme should be deemed to have come into force on 1.8.87. In this context, it is of significance that the scheme notified on 22.8.89 states that the scheme has been introduced in pursuance of proposals submitted to the State Government “for the desired improvement in under graduate/post graduate training” in all colleges and hospitals but makes no reference to the revision of the scales of pay of the junior
- C doctors. It is, therefore, difficult to accept the plea that the date 1.8.87 has significance only in the matter of pay scales and nothing else. This objection is not, therefore, sustainable.

- The second point made by the State and the appellants is that the
- D writ petitioners, under the scheme, are already “junior residents—2nd year” as they are already in the first year of a post graduate diploma course and they cannot, therefore, be eligible for admission to the second year of the degree course where also they will be designated as “junior residents—2nd year”. In our view, the objection is untenable. In the first place, it is only a variation of the argument that a person
- E already undergoing a diploma course cannot be admitted to a degree course, which we have rejected already. But that apart, there is nothing wrong in the writ petitioners being admitted to the second year degree course and being called “junior residents—2nd year” there instead of in the diploma course. In this context, it is necessary to point out that they have been admitted into the diploma course only in
- F March 1989 and that they are not seeking any credit for the period of education they have undergone in the diploma course.

- It is then argued that the words “*us samay*” occurring in the second part of para 5 of the scheme is really a mistake for “at this time” or “*is samay*” or “*vartman mein*”. In support of this contention, it is pointed out that the Director of Medical Education had written to the secretary to the Government on 2.11.1989 requesting that the word “*vartman*” be substituted in place of “*us samay*” in the notification of 22.8.89 “so that the meaning of the above lines shall be clear”. It is also submitted that the reference to such persons being eligible for admission “after the completion of the tenure” in the
- H house-job also makes it clear that persons who had already completed

their house jobs in 1987 or 1988 are not within contemplation. We are  
 unable to agree. When the notification talks of "*us samay*", we cannot  
 read it differently. The letter of Director of Medical Education dated  
 2.11.1989 finds a reference only in the appellants' rejoinder affidavit  
 and the writ petitioners have had no opportunity to meet it. The State  
 has not referred to this letter, or the action taken on it, anywhere.  
 These difficulties apart, the letter patently seeks to bring about a  
 change in the contents of the notification and is not a simple request  
 for clarification as it purports to be. At best, it only reflects the  
 Director's understanding of the notification and cannot bind the writ  
 petitioners or the Court. Also, no information has been furnished by  
 the appellants or the State as to whether the request of the Director  
 has been accepted and an amendment published by the Government  
 for the amendment suggested can become effective only on such publi-  
 cation. It may be pointed out *a propos* this contention that the notifica-  
 tion of 22.8.89 itself had been published in the Gazette only on  
 25.11.89, much subsequent to the Director's letter. Even assuming  
 that her suggestion has since been accepted and the words "at that  
 time" stand replaced by the words "at the present time" by a proper  
 notification later, that amendment cannot affect the parties before us.  
 The date material for the purposes of their admission was 30.9.89, the  
 last date by which the applications had to be sent in. That being so, the  
 words "*us samay*" used in the second sub-para of para 5 are the opera-  
 tive words. They clearly embody a reference to an anterior point of  
 time and this can only be a reference to the period since 1.8.87 which  
 finds specific mention in the first sub-para and which is the period  
 subsequent to the scheme coming into operation. Thus, all persons  
 doing house jobs after 1.8.87 are covered by the second sub para of  
 para 5. The words "after completion of the tenure" had to be used  
 here because the class of persons referred to also included those who  
 were in house jobs as on 22.8.89. Indeed this was how the scheme was  
 understood by the Principal of the M.L.N. College and, perhaps, by  
 the other principals too. We find that the terms of the advertisement  
 issued by the Principal, M.L.N. College, to which the writ petitioners  
 had responded said this:

"Candidates must have passed M.B.B.S. Degree  
 from a University recognised by M.C.I., should have com-  
 pleted one year compulsory rotatory internship training  
*and should have completed/will be completing* one year  
 housemanship in the subject concerned by 30th October,  
 1989. . . . ."

A This was the understanding of the scheme by the College Principal and, admittedly, the writ petitioners fulfilled these requirements. There is, therefore, no substance in the second contention either.

B Ms. Sobha Dixit, appearing for the State, submitted that the interpretation placed by the High Court creates two types of major difficulties. The first is that though the High Court's decision related only to M.L.N. College at Allahabad, similar claims have also been made for admissions into post-graduate courses all over the State and, in some cases, the High Court, following the present case, has issued directions to a like effect with the result that a large number of candidates who have secured admissions are now facing the loss of their seats and of the benefit of almost one year of study which they have already undergone by now. This argument, in our opinion, has no force. It does not appear to be correct to say that the High Court's decision in the present case will affect admissions all over the State. The respondents have stated thus in para 13 of their counter-affidavit:

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E *The admission in other Medical Colleges of U.P. have been done on the basis of old rules i.e. on the basis of Govt. Notification dated 15.12.1982 and 13.8.1987 and the students who have completed their house job much earlier prior to 22.8.89 were given admission in 2 year degree and 1 year diploma course according to their respective merits after the introduction of residency scheme dated 22.8.89."*

(underlining ours)

F This remains uncontroverted. Further, the validity of the admissions made to the other colleges would depend on those who had applied for admission there. If earlier batches of house-officers had also applied for admission to those colleges and been refused admission, as in the M.L.N. College, the position may be similar to that in the present case. If, however, such persons had not at all applied or had been duly considered, no question can arise now for their consideration. No unjustified revision of completed admissions is, therefore, likely to result. The plea that the appellants have already completed about a year in the course and should not lose the benefit thereof cannot also be given much weight because, by interim orders passed in the writ petitions, the High Court had made it clear that they were being allowed to continue in the course only on the specific understanding

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that their admissions will be subject to the result of the writ petitions. A

The second point made by the State counsel is that it compels the batch of students working in a house-job as on 22.8.89 to face competition from earlier batches and this according to her, is contrary to law. In support of this contention, she referred to certain observations made by this Court that it would not be correct to compare the merits of candidates in different examinations and different States. We see no force in this contention. As pointed out earlier, before and after the introduction of the scheme, admission to the first year of the scheme was and will be by open competition between medical graduates who had completed house-jobs or internships irrespective of the batch to which they belong. It is stated in an affidavit filed on behalf of the appellants that, though the writ petitioners, while getting admission to the post-graduate diploma course earlier had to compete with earlier batches of students, they were given some preference. We do not know on what basis such preference was given and it is too late now to examine that aspect. But the fact remains that they were considered along with candidates of earlier batches. We, therefore, see no justification for contending that great injustice will be caused to the appellants because it has become necessary for them to face competition from two earlier batches of students. B  
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On the contrary, as pointed out by the High Court, it is the interpretation pleaded for by the State that may offend article 14 of the Constitution. We have held earlier that the scheme, though introduced in 1989 is effective from 1.8.87. If that be so, to place house-officers working on 22.8.89 alone in a better position than those who had completed house jobs in 1987, 1988 or earlier in 1989 would result in a discrimination in their favour and against the writ petitioners unrelated to—indeed, contrary to—the very object and purpose of giving the scheme retrospective effect from 1.8.87. E  
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One further contention raised on behalf of the state and the appellants is based on a decision of the High Court in the case of one Dr. Sandeepa Srivastava (Civil Miscellaneous Writ Petition No. 13419/89), a petition for special leave against which was dismissed by this Court (SLP 1380/89 dismissed on 6.4.90). Dr. Srivastava had completed M.B.B.S. in 1987 and one year internship in June 1988 and had applied for admission to a house job but before the admission could be decided upon, the Residency Scheme had been introduced. She challenged the admission to the *first year* of the degree course granted by the M.L.N. College, in preference to her, to one Dr. Surabhi Rai who G  
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A had completed her M.B.B.S. in 1987, completed her internship in 1988 and was in a house job as on 22.8.89. A very peculiar situation seems to have arisen in that case. Dr. Surabhi Rai had applied for admission to the *first year* and not the *second year* of the new residency course though she was on a house job as on 22.8.89. It appears she could not apply for the 2nd year like the writ petitioners here as her house job

B could not be completed by 30.10.89, the date mentioned in the advertisement with which we are concerned. Dr. Srivastava contended before the High Court (a) that only the 1983 batch of students who had passed M.B.B.S. in 1988 were eligible for admission to the degree course and not those who had passed out earlier; and (b) that Dr. Surabhi Rai should have sought admission to the second, and not the first, year of the Junior Residency course. The court rejected the first

C contention which was patently untenable and this was sufficient to dispose of the writ petition. The court, however, also proceeded to consider the second contention and dealt with it as follows:

D "The second contention of the petitioner has also no force. For this proposition, the petitioner has relied on the last part of para 5 of the Government order dated 22.8.89. Para 5 of the Government Order has laid down that house officers and Junior doctors working since August 1, 1987 will be converted into Junior Residents of First Year. Second

E year etc. in accordance with the chart given in this para. Last part of this para lays down about these house officers, who were working since 1.8.87. This para does not provide for the criteria or deal with the admission of those candidates, who have joined the First Year House Job and have not yet completed even first year. The cases of those, who

F have joined the course of house job but could not complete till the introduction of the new scheme of the residency, has been considered in the meeting of the Principals of all the Medical Colleges of U.P. and Director of Medical Education and Training on 16.9.1989. Para 6 of this resolution laid down that as the course of house job has been abolished after the enforcement of the residency scheme and the

G candidates, who are undergoing training of house job cannot pursue their studies and training any more and as such, all those candidates, who are undergoing training of house job should be admitted in the first year course of Junior Residency on the basis of merit. This resolution of the Principals of all the Medical Colleges appears to be fair and

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most reasonable. As the course of house job has been abolished and the candidates undergoing this course cannot possibly pursue their studies and if they are not admitted in the first year of the Junior Residency, they will suffer great hardship and irreparable loss, because they have been deprived of their right to pursue their course of house job in the middle of the session.

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When the course of house job has been abolished, it is impossible for the persons undergoing the course of house job to pursue their studies any more. In fact respondent No. 3 would have been happy, if she was permitted to continue and conclude the one year course of house job, because in that case after few months she would have got admission in the second year of Junior Residency and would have become senior to the petitioner and all others, who will be joining the first year of Junior Residency course now, but on account of the abolition of the system of house job it became impossible for the Respondent No. 3 to continue with the course and as such, she had to be contended with the admission in the first year of Junior Residency course."

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We do not wish to say anything about this part of the judgment as we are not aware whether any appeal has been sought therefrom. It is sufficient to point out that all the appellants before us are persons who were in a house job on 22.8.89 and are claiming admission to the second year of the degree course. We shall, therefore, simply content ourselves by saying that, since all the parties before us have proceeded on the footing that persons in the position of the appellants are eligible for admission as Junior Residents—2nd year, we are not called upon to consider the correctness of the judgment in *Dr. Sandeepa Srivastava's* case on this point. That was a case which dealt with an admission to the first year of the degree course and, since there is nothing in the scheme which prohibits any person in the position of the appellants or *Dr. Surabhi Rai* from applying for admission as junior resident—Ist year, the decision of the High Court was clearly correct. The dismissal of the SLP in that case does not, therefore, affect our present discussion.

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The Judgment of the High Court in appeal before us, the judgment in *Dr. Sandeepa Srivastava's* case and the other judgments to which *Ms. Sobha Dixit* made a reference, however, make it clear that the interpretation of the clauses of the scheme is, by no means, an easy

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A task. In practice also, the basis on which the principals—at least the principal of the M.L.N. College—proceeded does not appear consistent with the letter of the Director of Medical Education dated 2.11.89. In this state of affairs, we think that it is upto the State to find out a practical solution to ensure that the student community is not prejudiced by the ambiguities in the scheme. In this context, our attention was drawn to the directions of this Court in the case of *Mridula Avasthi and Others v. University of Delhi and Others*, [1988] 3 SCR 762:

C “In this background we are of the view that the impasse created on account of the rival claims advanced by the freshers and the seniors has to have a rough and ready solution-yet not arbitrary and as acceptable and satisfying as possible. We find that the two-year degree course speciality-wise has 149 seats while the three-year degree course has 139 seats. For convenience we extract the particulars made available at page 4 of the Bulletin of Information. It may be pointed out that there are 1003 candidates as against total 270 vacancies (degree and diploma courses together) for the seniors; and there are 331 candidates as against 205 vacancies for the two courses for the freshers. With a view to providing some more seats for seniors we suggested to Mr. Rao appearing for the University that the number of seats may be increased and he has on instructions agreed, provided the Union of India provides funds and the Medical Council agrees to accommodate. There are 21 specialities as indicated above. We direct that the University shall create one seat in every speciality and thus 21 additional seats will be available over and above the 149 seats fixed by the University representing the 75% quota. To this enhanced number of seats the 25% reservation of All India Selection shall not apply. From the reserved seats made for the freshers, 21 seats being one from every speciality shall be taken away and made available to the seniors. Thus 42 seats in all will be available for the seniors in the Post-Graduate course to be filled up on the basis of *inter se* merit keeping the senior group apart.

H The creation of the 21 seats will involve additional funds to be provided by the Union of India. It will also require approval of the Medical Council of India and there



will perhaps also be necessity for permitting the variation of guide-student ratio. Since it is for one year and there would be no scope for recurrence and this has arisen in peculiar circumstances explained above, we direct the Government of India to take our order made without hearing it with a sense of understanding and make the necessary provisions. We also suggest to the Indian Medical Council to provide the necessary accommodation by relaxing the requirements. These may be done quickly so that the time schedule may not be affected.”

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Based on the above observations, an application has been filed before us praying that directions may be issued to the State of create, with the approval of the Medical Council of India, an adequate number of additional seats to accommodate all the applicants in the second year of the degree course in some speciality subject to the other rules in force in the State in this behalf. We do not know how far this will be feasible having regard to the position prevalent not only in the M.L.N. Medical College but also elsewhere in the State. We do not know how many additional seats will have to be created on this footing and whether it is at all possible to do so. We, therefore, give no specific directions but leave it to the State Government to review the situation in the entire State and see if any solution that will accommodate all the contestants, who qualify on merit, can be found out. However, any such review should not stand in the way of the immediate consideration—subject to other rules in force—of the writ petitioners for admission as “junior residents—2nd year”. They have already lost almost one year of the degree course though, presumably, (except perhaps for one) they have been continuing their studies in the post-graduate courses where they had been earlier admitted. This should be set right and such of those as are admitted should be enabled to make up for lost time and to complete their post graduate course, if possible, by the end of 1991.

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With the above observations, these appeals are dismissed. We, however, make no order as to costs.

R.S.S.

Appeals dismissed.