

Before J. V. Gupta, C.J. & R. S. Mongia, J.
 MAHARSHI DAYANAND UNIVERSITY, ROHTAK,—Appellant.

versus

PARVEEN KUMAR AND OTHERS,—Respondents.

Letters Patent Appeal No. 1097 of 1990.

28th November, 1990.

Indian Medical Council Act, 1956—Ss. 20 & 30—Prospectus for admission to Post-graduate courses in Medical College—Medical Council framing Regulation for admission to such courses—Nature of such regulations—Regulations if directory only—10 marks allocated for interview—Marks not divided into sub-heads—Whether such allocation excessive.

Held, that only 10 marks have been allocated for interview in the prospectus while laying down the procedure for determination of merit. It is not necessary to have marks divided into sub-heads so far as the interview is concerned. Marks allocated for interview were not excessive.

(Para 9)

Held, that the regulation of the Medical Council of India that how evaluation of merit is to be done is merely directory and not mandatory and, in fact, outside the scope of S. 33 of the Act. There is no harm if the selection is based both on the basis of the competitive test and the performance in the qualifying examination and interview.

Appeal under Clause X of the Letters Patent Appeal against the impugned judgment dated 13th June, 1990 delivered by Hon'ble Mr. Justice K. P. Bhandari in Civil Writ Petition No. 1430 of 1990.

J. L. Gupta, Sr. Advocate with Vikrant Sharma, Advocate and Rakesh Singh, Advocate, for the Petitioner.

J. K. Sibal, Advocate and Pawan Mutneja, Advocate, for the Respondents.

ORDER

R. S. Mongia, J.

(1) This judgment will dispose of Letters Patent Appeals Nos. 1097 and 1098 of 1990, filed by Maharshi Dayanand University, Rohtak (hereinafter called the University). Two writ petitions Nos. 1430 and 1637 of 1990, out of which the above-said two Letters Patent Appeals have arisen, were allowed by a common judgment of the learned Single Judge.

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(2) Brief reference to the facts of both the cases would be necessary :—

Medical College, Rohtak, which is affiliated to the University, had invited applications for the admission to post-graduate degree courses in the various specialities in the College, for the sessions 1990-91. The post-graduate course is of three years' duration. Students who have not done their house job were to be admitted in the first year of the three years' degree course; whereas those who have done one year house job were to be admitted to the second year of the three years' degree course. The former type of students who have not done their housejobs i.e. fresh graduates who have only completed their internship, the University has described them as Group II students. In Letters Patent Appeal No. 1097 of 1990 the respondents writ petitioners are Group II students. The students who have done one year housejob and are entitled to be admitted to 2nd year of the three years' degree course, have been described as Group I students by the University. In Letters Patent Appeal No. 1098 of 1990, the respondents writ petitioners are Group I students. For the Group I students, there are 97 seats, out of which 24 are to be filled in on the basis of All India Competitive Entrance Examination, 20 are reserved for the candidates from the Haryana Civil Medical Service (HCMS) and 53 are open seats to be filled on merit prepared on the basis of written test and interview, etc. to which reference would be made hereinafter. The seats reserved for HCMS are filled only on the basis of merit prepared on the basis of the written test. As far as Group II is concerned, there are in all 68 seats, out of which 16 are to be filled on the basis of a test to be held on All India basis, 16 for HCMS and 36 are open seats to be filled in on merit determined on the basis of written test and interview etc.

In the prospectus issued by the Authorities for the admission to the post-graduate courses, the procedure for determination of merit as well as guide-lines for the written test have been mentioned, which are reproduced below :—

“Appendix A.

Procedure for determination of merit (... 10 Marks

1. *Academic Marks.*— (a) 2.5 marks will be given for the first 50 per cent obtained in MBBS (Total of all the

three professional examination) and to that will be added 15 per cent of the aggregate percentage marks secured above 50 per cent. A candidate scoring only 50 per cent marks will be given 2.5 marks only and the other one scoring 75 per cent marks will be given 6.25 marks. Provided that :

- (b) In case of students who have passed in any of the M.B.B.S. examinations in more than one attempt, 1 mark will be deducted for each extra attempt subject to deduction of maximum 5 marks.

2. *House Job*

... 10 Marks

There will be five marks for each senior and junior housejob and there will be a system of grading the performance during housejob. The marks allotted for different grades will be as follows :

Grade A (Excellent Outstanding)	5 Marks.
Grade B (Very good)	3 Marks.
Grade C (Good)	2 Marks.
Grade D (Average, Satisfactory)	1 Mark.

“A report on the candidates performance during house job shall be obtained before the interview from the Head of the department/unit where he/she has worked. For this purpose the students shall be asked to indicate the name and latest address of the head of the unit with whom he/she has worked during housejob. In rare cases if such a report cannot be obtained due to the non-availability of the concerned consultant, the candidate shall be allotted marks according to his/her total average merit. In pre-clinical subjects where housejob is not essential, the grade obtained in other equivalent jobs (Demonstrator, Research Officer etc.) may be treated at par. Similarly, those candidates who have done rural/defence service etc. in lieu of housejob, the grade obtained there may be treated accordingly.

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3. *Internship*.—For 3 years system performance during inter-ship only shall be considered in place of house-job and marks allotted accordingly. The procedure for grading the performance will be the same as adopted for house-job.
 4. Weightage for graduates of Medical College, Rohtak. 10 Marks.
 5. Written test : 60 Marks.
 6. Interview : 10 Marks.

This will take into account the professional performance and also contribution to sports, other extra-curricular activities, participation in other community welfare programmes etc. The necessary documents should be submitted at the time of interview.

7. Selection of H.C.M.S. Doctors for admission to M.D./M.S. and Postgraduate Diploma courses will be made by the State Government in consultation with the University.

Guidelines for the Written Test.—It will consist of two papers:

- (A) General paper covering all M.B.B.S. subjects. 40 Marks.
- (B) Subject paper (questions pertaining to the subject applied). 20 Marks.

Paper A will be M.C.Q. Type where as Paper B may be MCQ Type or short notes. The course and syllabi will be the same as for the three professional MBBS exam., consisting of various subjects namely, Anatomy Physiology, Biochemistry, Pathology, Microbiology, Forensic Medicine, SPM, General Medicine, Paediatrics, Surgery, Orthopaedics, Obst. and Gynaecology, Eye, ENT and Psychiatry.

Negative Marking for M.C.Q. questions :

- (a) Full credit will be given for a correct answer and 1/4 discredit for incorrect answer.

(b) The MCQ may be of different types, but such questions will be framed so that it can be answered by use of only one letter (A to E).

(c) Candidates securing less than 30 per cent marks in the written test will not be eligible for admission.

Note :

1. In General paper (A) Approximate marks allotment of different subjects will be proportionate to the marks allotted to these subjects in the MBBS examination.
- “2. Standard of questions will be that of M.B.B.S. examination including training as interns. Questions that may be asked should be mostly of applied nature i.e. in subjects like anatomy, Physiology, Bio-chemistry, Microbiology, etc, the questions should be on applied Anatomy, applied Physiology, Applied Bio-chemistry etc.
3. In the clinical subjects e.g. Medicine, Surgery, Gynaecology and Obstetrics etc. the Questions should be simple in nature, of M.B.B.S. Standards plus training experience gained during internship/house job.
4. In the subject paper (B), Questions will be of M.B.B.S. standard. In addition adequate representation will be given to assess the skills learnt during internship/house-job etc.”

It may be mentioned that according to the prospectus, Group-I students are also eligible to compete for the seats meant for Group-II students. Though there is to be one common merit list for Group I and Group II, but while seeing the merit of Group-II students their internship marks are to be taken into consideration. Group-I students who are competing with Group-II students for the seats meant for Group-II students, their house job marks are not to be counted for those seats but only their marks obtained during internship are to be taken into account as per the procedure for determination of merit.

(3) It may further be mentioned that under Section 20 of the Indian Medical Council Act, 1956, powers have been given to the

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Medical Council of India to prescribe the minimum standard of Post-graduate Medical Education for the guidance of Universities and for advising the Universities in the matter of securing uniform standards. Section 33 of this Act gives the powers to the Medical Council to make regulations with the previous sanction of the Central Government. Sections 20 and 33 of the Medical Council Act are reproduced below :—

- “20. *Post-graduate Medical Education Committee for assisting Council in matters relating to post-graduate medical education.*—(1) The Council may prescribed standard of post-graduate medical education for the guidance of Universities, and may advice University in the matter of securing uniform standards for post-graduate education throughout India and for this purpose the Central Government may constitute from among the members of the Council a Post-graduate Medical Education Committee (hereinafter referred to as the Post-graduate Committee).
- (2) The Post-graduate Committee shall consist of nine members all of whom shall be persons possessing post-graduate medical qualifications and experience of teaching or examining post-graduate students of medicine.
- (3) Six of the members of the Post-graduate Committee shall be nominated by the Central Government and the remaining three members shall be elected by the Council from amongst its members.
- (4) For the purpose of considering Post-graduate studies in a subject, the Post-graduate Committee may co-opt, as and when necessary, one or more members qualified to assist it in that subject.
- (5) The view and recommendations of the Post-graduate committee on all matters shall be placed before the Council; and if the Council does not agree with the views expressed or the recommendations made by the Post-graduate Committee on any matter, the Council shall forward them together with its observations to the Central Government for decision.

33. *Power to make regulations.*—The Council may, with the previous sanction of the Central Government, make regulations generally to carry out the purposes of this Act, and, without prejudice to the generality of this power, such regulations may provide for—
- (a) the management of the property of the Council and the maintenance and audit of its accounts;
 - (b) the summoning and holding of meetings of the council, the times and places where such meetings are to be held, the conduct of business thereof and the number of members necessary to constitute a quorum;
 - (c) the resignation of members of the Council;
 - (d) the powers and duties of the President and Vice-President;
 - (e) the mode of appointment of the Executive Committee and other Committees, the summoning and holding of meetings, and the conduct of business of such Committees;
 - (f) the tenure of office, and the powers and duties of the Registrar and other officers and servants of the Council;
 - “(g) the particulars to be stated, and the proof of qualifications to be given in applications for registration under this Act;
 - (h) the fees to be paid on applications and appeals under this Act;
 - (i) the appointment, powers, duties and procedure of medical inspectors and visitors;
 - (j) the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in Universities or medical institutions for grant of recognised medical qualifications;

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- (k) the standards of staff, equipment, accommodation, training and other facilities for medical education;
- (l) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations;
- (m) the standards of professional conduct and etiquette and code of ethics to be observed by medical practitioners; and)"

Under the powers referred to above, the Post-graduate Medical Education Committee had made some recommendations regarding admissions to the Post-graduate courses and later on these recommendations were approved as Regulations under Section 33 of the Medical Council Act. Apart from laying down criteria for selection of the students as also who would be eligible for admission to the Post-graduate courses, it had also provided as to how the merit was to be evaluated. For evaluation of the merit of the candidates, the following recommendations in the form of regulations was prescribed :—

*“Evaluation of merit.—*The Post-graduate Committee was of the opinion that in order to determine the merit of a candidate for admission to post-graduate medical courses, (i) his performance at the M.B.B.S. examination, (ii) his performance during the course of internship and housemanship for which a daily assessment chart be maintained and (iii) the report of the teachers which is to be submitted periodically may be considered.

Alternatively the authorities concerned may conduct competitive entrance examination to determine the merit of a candidate for admission to post-graduate medical courses.”

(4) Before the learned Single Judge, the points which were raised by the writ petitioners were that 30 marks out of 100 had been kept for the interview, which are very excessive as there was a room for favouritism and nepotism. Further according to the recommendations of the Medical Council of India, there was no provision for holding interview and the admission had to be based either on the performance in M.B.B.S. examination and during the internship and housemanship or alternatively by conducting a competitive entrance

examination. The introduction of interview was against the recommendation of the Medical Council of India thirdly there was discrimination between the different sources of admission inasmuch as the students who are admitted on the basis of All India examination or those who are HCMS, are admitted without any interview, and therefore, the introduction of interview as far as the writ-petitioners, were concerned, was arbitrary and discriminatory. It was also contended before the learned Single Judge that the Selection Committee had not been duly constituted.

(5) The learned Single Judge held that 30 per cent marks had been allocated for interview, which were very excessive and the criteria which had been laid down by the University was in violation of the recommendations of the Medical Council of India, which were mandatory and further there was discrimination between the different sources of admission as far as the question of interview was concerned and also the Selection Committee had not been properly constituted. On the basis of these findings both the writ petitions were allowed and it was directed that the merit list be prepared taking into consideration only two matters i.e. merit prepared according to the marks obtained in the written test and weightage for students who have qualified M.B.B.S. from Maharshi Dayanand University as provided in the procedure for determination of merit. Aggrieved by the judgment of the learned Single Judge, the University has filed these two appeals.

(6) While admitting these appeals on 20th September, 1990, we had stayed the operation of the impugned judgment of the learned Single Judge.

(7) Mr. J. L. Gupta, Senior Advocate, learned counsel for the appellant submitted that the learned Single Judge was not correct when he held that 30 marks out of 100 had been allocated for interview. According to the learned counsel only 10 marks had been allocated for interview which were well within the limits indicated by the Supreme Court. He submitted that 10 marks had been allocated for the achievement in the M.B.B.S. and these were to be awarded on mathematical basis which is indicated in the procedure for determination of merit. 2.5 marks were to be given for the first 50 per cent marks in the M.B.B.S. and to that would be added 15 per cent of the aggregate percentage marks secured above 50 per cent. In other words, the candidate securing 50 per cent marks would be

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given 2.5 marks only and the person securing 75 per cent marks would be given 6.25 marks. According to the learned counsel there was no discretion with the Selection Committee while awarding these marks which as indicated above was mathematical. Similarly, the counsel submitted that the house-job marks and the internship marks were dependent upon the reports which the students may have obtained while working for the house-job or internship, and here again, there was no discretion with the members of the Selection Committee as these were again mathematical, depending upon the report being excellent, very good, good or average as indicated in the procedure for determination of merit. According to the learned counsel only 10 marks were allocated for interview which were not excessive taking into consideration that the personality of the student is sufficiently developed while they seek admission to the Post-graduate courses and even while awarding marks for the interview, the Selection Committee had to take into account professional performance, contribution to sports, other extra-curricular activities, participation in other community welfare programme etc. The learned counsel cited judgment of the Supreme Court in *Atul Khullar and others v. State of J & K and others* (1), wherein allocation of 15 per cent marks for interview had been upheld. In this case the Supreme Court observed as under :—

“There was a general submission that the procedure followed in conducting the written test and the *viva voce* test by the Selection Committee was invalid. We have examined the detailed procedure followed in preparing the question papers and evaluating the answer scripts and have considered other aspects of the matter. The petitioners have not succeeded in establishing that the procedure is materially defective. It is urged that the allocation of only 85 points to the *viva voce* test out of a total of 100 points gives a weightage to the *viva voce* test over the written test which is unreasonable. We are unable to agree that the allocation of 15 points to the *viva voce* test creates an unreasonable imbalance in the evaluation of a candidate's ability.”

(8) Mr. J. K. Sibal, learned counsel appearing for the respondents (writ-petitioners) (i.e. Group-II students) in reply contended

(1) A.I.R. 1986 S.C. 1224.

that as far as the above argument was concerned, the Supreme Court had not laid down as universal rule that 15 per cent marks can be allocated for interview and in fact the Supreme Court had upheld the 15 per cent marks for interview as these had been sub-divided into the following heads :—

- | | |
|-------------------------|----------------|
| (i) assessment | : 5 marks. |
| (ii) general knowledge | : 4 marks. |
| (iii) social activities | : 3 marks, and |
| (iv) personality test | : 3 marks. |

The learned counsel submitted that this was evident from the judgment in *Koshal Kumar Gupta and others v. State of J.&K. and others* (2), to which reference has been made in *Atul Bhullar's case* (supra). The learned counsel went on to submit that in fact there were 20 marks for interview inasmuch as there was no record of the candidates for internship and the internees had worked under various persons ranging from few days to one month and there was no criteria for awarding the certificates to the internees and this was in fact left to the discretion of the Selection Committee. Further he submitted that the marks in the interview had not been divided into sub-heads, as in *Koshal Kumar Gupta's case* (supra) and even 10 marks which had been allocated for interview, were too excessive.

(9) We find force in the submissions of the learned counsel for the appellant and the contention of the learned counsel for the respondents is without any merit. Only 10 marks have been allocated for interview in the prospectus while laying down the procedure for determination of merit. The other 10 marks for academic and 10 marks for house-job/internship are all mathematical based marks and there is no discretion with the Selection Committee as has been indicated above. The marks for internship have to be awarded on the basis of the assessment of the various persons under whom the internee might have worked. This Court cannot go into the fact whether any record was being kept or not for the internees. However, we are satisfied from the record produced by the University that there was some record regarding the assessment of the work of the internees. We are further of the view that it is not necessary to have

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marks divided into sub-heads so far as the interview is concerned. This was held by the Supreme Court in *Lila Dhar v. State of Rajasthan and others* (3), wherein it was observed as under :—

“The second ground of attack must fail for the same reason as the first ground of attack. The rules themselves do not provide for the allocation of marks under different heads at the interview test. The criteria for the interview test has been laid down by the Rules. It is for the interviewing body to take a general decision whether to allocate marks under different heads or to award marks in a single lot. The award of marks under different heads may lead to a distorted picture of the candidate on occasions. On the other hand, the totality of the impression created by the candidate on the interviewing body may give a more accurate picture of the candidate's personality. It is for the interviewing body to chose the appropriate method of marking at the selection to each service. There cannot be any magic formulae in these matters and courts cannot sit in judgment over the methods of marking employed by interviewing bodies unless, as we said. It is, proven or obvious that the method of marking was chosen with oblique motive.”

In view of what has been stated above, we hold that the learned Single Judge was not correct in holding that 30 per cent marks had been allocated for interview, in fact only 10 marks have been allocated for interview, which, to our mind, were not excessive especially in view of the judgment of the Supreme Court in *Atul Khullar's case* (supra).

(10) As far as the question whether the criteria was in violation of the recommendations of the Medical Council of India which have already been reproduced above, the learned counsel for the appellants submitted that though these recommendations may have been approved as Regulations, still these are mere guidelines and are recommendatory in nature and are not mandatory in character. For this proposition, the learned counsel relied on Supreme Court judgment in *State of M.P. and another v. Kumari Nivedita Jain and others* (4)

(3) A.I.R. 1981 S.C. 1777.

(4) AIR 1981 SC 2045.

In that case the Medical Council of India had laid down that the selection of students to Medical Colleges should be based solely on merit of the candidates which may be determined on the basis of a competitive entrance examination. General candidates were required to get minimum of 50 per cent marks in the qualifying examination and 50 per cent in the entrance examination as well. However, in respect of candidates belonging to Scheduled Castes and Scheduled Tribes, minimum marks required for admission were to be 40 per cent in lieu of 50 per cent for the general candidates. The State Government by an executive order completely relaxed the condition relating to the minimum qualifying marks for selecting students to medical colleges in respect of candidates belonging to Scheduled Castes and Scheduled Tribes. Repelling the challenge that the executive order of the State Government relaxing the qualification for Scheduled Castes/Scheduled Tribes was in violation of the regulation of the Medical Council of India, the apex Court held that the regulation was merely directory and not mandatory. It was also held that a regulation which dealt with the process or procedure for selection from amongst the eligible candidates is outside the authority of the Medical Council under Section 33 of the Act, which has already been reproduced above. Applying the same principle, we hold that the regulation of the Medical Council of India that how evaluation of merit is to be done, is merely directory and not mandatory and is in fact, outside the scope of Section 33 of the Act. There is no harm if the selection is based both on the basis of the competitive test and the performance in the qualifying examination and interview. In fact, in *Lila Dhar's case* (supra), the Supreme Court observed as under :—

“Thus, the written examination assesses the man's intellect and the interview test the man himself and ‘the twain shall meet’, for a proper selection. If both written examination and interview test are to be essential features of proper selection, the question may arise as to the weight to be attached respectively to them. In the case of admission to a college, for instance, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has to be given to performance in the written examination. The importance to be attached to the interview test must be minimal.”

No serious challenge was made by the learned counsel for the respondents to this argument of the learned counsel for the appellants.

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Consequently, we hold that the criteria prescribed by the University for determination of merit was not in violation of the recommendations of the Medical Council of India.

(11) Coming to the third point that there was discrimination between different sources inasmuch as there was no interview for the candidates who were admitted on the basis of All India examination or those candidates belonging to H.C.M.S., we are of the opinion that the learned Single Judge was not correct. These are altogether different sources. It may not be necessary to hold interview of the candidates who appear in the All India test for which the standard may be different. The candidates belong to far flung places in the country and it may not be practical to call each one for interview. Similarly, the candidates belonging to H.C.M.S. have already undergone couple of years of service and gained experience in their service career. They had already been interviewed for getting jobs. These are all separate categories, and, therefore, the question of any discrimination would not arise. Consequently, we hold that there is nothing wrong to prepare the merit by subjecting the freshers and the persons who had done house job to interview. It is immaterial that in some Institutions like P.G.I. or All India Medical Institute, no interview is held. The question here is whether providing interview is bad or not, which we have already held that it is not bad.

(12) The learned Single Judge held that the procedure laid down in the prospectus regarding the constitution of the Selection Committee is very unsatisfactory. The Director Principal is to chair the Selection Committee. The qualifications of the other members of the Selection Committee have not been laid down. Learned Judge further observed that no outside experts are invited to take part in the proceedings of the Selection Committee. With respect to the learned Single Judge, we may observe that there was no such challenge in the writ petition. The only challenge was that one Professor Sarbjit Singh, head of the Mathematics department was associated in the process of interview and by no stretch of imagination he could be stated to be an expert in the subjects of the various Post-graduate courses. To this, the University had replied that Professor Sarabjit Singh was a senior Professor and was the nominee of the University on the Selection Committee, who was to assess the overall assessment of the candidates. The experts in the subjects were inducted in the Selection Committee depending upon

the subject for which the interview was to take place. Consequently, we find nothing wrong in the constitution of the Selection Committee.

(13) We may deal with a point raised by the learned counsel for Group-I students that the criteria for the selection was in violation of the Ordinances of the University. The learned counsel referred to some ordinances occurring in the University Calendar. We find that these Ordinances pertain to the admissions in the University departments itself and not to the affiliated colleges like the Medical Colleges. Consequently, we do not find any merit in the submission of the learned counsel for the Group-I Students.

(14) Faced with the above situation, Mr. J. K. Sibal, learned counsel for Group-II students submitted that freshers who have just completed M.B.B.S., as also internship and for whom separate seats have been reserved have been made to compete with those students who have completed house-jobs and while setting paper of 20 marks of the written test i.e. Paper B, the same is set from the course/knowledge which one acquires while doing house-job. According to the learned counsel this was evident from the guidelines of the written list reproduced above. He submitted that those who have done house jobs would certainly do better in paper B and would get admitted to 3 years' course and literally there will be no reservation for the freshers, for whom infact 36 seats have been reserved. The competition being very tough there will be just fractional margin between the candidates who get admitted. The learned counsel submitted that in fact there should be two separate examinations and merit lists, one for the Group I and the other for Group II students. According to the learned counsel there was a competition between unequals. He illustrated his argument that if a fresher is placed amongst the first 53 candidates in the merit of the open competition, still he would not be admitted in the 2nd year alongwith Group I students though he is more meritorious than the persons who had completed house job. On the other hand, learned counsel for the appellants submitted that University can always lay down higher standards than the minimum to get the best possible talent. In para 6 of the preliminary objections the University had averred as under in its written statement:—

“That the advantage ascribed to house-job holders will get cancelled out because of the attrition in their knowledge of the general paper which had double the marks compared to speciality papers. Thus while they may gain in

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one area with 20 marks, they shall loss in field having 40 marks, thereby becoming comparable or even equal.

That a candidate who have done house job has no doubt acquired some greater knowledge or skill. While this skill may add little to his taking the special paper of 20 marks, he would simultaneously be at a disadvantage for the general paper of 40 marks where an internee is supposed to do better because of his having had no loss of time between the courses of graduation in various subjects. While the house surgeon, during the one year house job, has lost one year comparatively."

(15) We find force in the submissions of the learned counsel Mr. J. K. Sibal. The freshers cannot be made to compete with persons who had done housejob where some part of the paper is set regarding that course which only those persons have done and completed house job. If this is to be allowed then those persons who had done house job would always steal a march over the freshers. The position would have been totally different if all the seats were open to all the candidates. Since there is special reservation for freshers (no doubt the persons who had done house job can also compete with freshers), their competition has to be out of the course which the freshers have completed and not from the course which the freshers have never done and only those persons who have completed house jobs have done. If this is permitted then the reservation of seats for Group II students becomes illusory. Since in the present case, the examination has already taken place, it will be in the fitness of things that as far as admission of the candidates for Group II is concerned, the merit list should be prepared either by taking the marks in the written examination of paper A only and the merit be prepared by counting these marks as well as the other marks provided in the criteria for determination of merit. In other words, the merit would be prepared out of 80 marks. Alternatively the marks in paper 'A' out of 40 can be made one and a half times to make it out of 60 and then a merit list be prepared out of 100 marks as laid down in the criteria for determination of merit.

(16) For the reasons recorded above, we set aside the judgment of the learned Single Judge and hold:—

- (i) that the marks allocated in interview are 10 and not 30 as held by the learned Single Judge and are not excessive;

- (ii) that the criteria laid down for determination of merit is not violative of the recommendations of the Medical Council of India;
- (iii) the criteria for admission is not arbitrary discriminatory; and
- (iv) the constitution of the Selection committee is valid.

(17) We further hold and direct that as far as the admission of the candidates for Group II (3 years' course) is concerned, the merit list should be prepared either out of 80 marks or 100 marks as indicated above. Resultantly L.P.A. No. 1098 of 1990 is allowed while L.P.A. No. 1097 of 1990 is partly allowed to the extent indicated above.

(18) Before parting with the judgment, we may observe that the University should take steps to finalise the admissions as expeditiously as possible and make all endeavour to see that a year of the students who get admitted in the Post-graduate courses is not wasted. We leave the parties to bear their own costs.

S.C.K.

Before G. R. Majithia, J.

UTTAM SINGH—Appellant.

versus

PARTAP SINGH (DECEASED) REPRESENTED BY HIS LEGAL HEIRS,—Respondents.

Regular Second Appeal No. 2110 of 1978.

19th December, 1990.

The Punjab Custom (Power to contest) Act, 1920—S. 7—Punjab Custom (Power to contest) Amendment Act, 1973—Alienation of ancestral property challenged—Declaratory decree passed—Amending Act abolishing right to challenge such alienation—Decrees already passed if invalidated by such amendment—Limitation for such suit—right to sue when accrues.

Held, that a declaratory decree already obtained by reversioner would continue to be operative as amending Act does not render such a decree a nullity. Consequently, after such a decree had