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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7452/2014 & CM No.17671/2014

RAJNISH KUMAR

..... Petitioner

Through: Mr.Pankaj Kumar Singh, Advocate.

versus

GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ORS.

..... Respondents

Through: Mr.Vaibhav Kalra and Ms.Sumedha
Dang, Advocates for respondent nos.1
& 2.

Ms.Suparna Srivastava, Advocate for
the respondent no.3.

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Date of Decision : 19th November, 2014

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. The present writ petition has been filed with the following prayers:-

a) Issue a writ of certiorari, mandamus or any other appropriate writ, order or direction directing the respondents to admit the petitioner in M.Ch.(Paediatrics Surgery), PGIMER, Dr.R.M.L.Hospital for the Session 2014-2015.

b) To direct the respondents to admit the petitioner in M. Ch.(Paediatrics Surgery), PGIMER, Dr.R.M.L.Hospital for the Session 2014-2015 in terms of the observation and ratio

laid down by the Division Bench of the Hon'ble High Court of Delhi in the case of Manoj Kumar Dhaka vs. Union of India & Ors., 2013 (133) DRJ 473 (DB) (paras 18 & 19) and the same being upheld by the Hon'ble Supreme Court vide judgment and order dated 1.7.2013 passed in S.L.P (C) No.5367 of 2013;

c) Pass any other or further order or orders that this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case."

2. In the writ petition it is averred that on 30th September, 2014 one of the candidates who took admission in the course of M.Ch.(Paediatrics Surgery) at PGIMER, Dr.R.M.L.Hospital resigned and vacated the seat. It is also stated that though the petitioner who was first position in wait list came to know about the said vacant seat on 30th September, 2014 itself, yet as he was in Jammu on emergency duty with the Department of Neurosurgery, GMC/SSH Hospital, Jammu at that point of time, it was impossible for him to come over to Delhi and take admission on 30th September, 2014. Copy of the certificate dated 25th October, 2014 issued by the Head of Department, Department of Neurosurgery, GMC/SSH, Jammu is reproduced hereinbelow:-

TO WHOM IT MAY CONCERN

Certified that Dr.Rajnish Kumar s/o Sh.Pritam Lal, Senior Resident, Department of Surgery, GMC, Jammu was on Emergency duty for 24 hours on 30th of September 2014 in the Department of Neuro Surgery.

3. Learned counsel for the petitioner states that petitioner had sent an email dated 30th September, 2014 to the respondent no.1 seeking time till 1st October, 2014 to come over to Delhi and join. Copy of the email dated 30th September, 2014 is reproduced hereinbelow:-

“Respected Prof.Praveen Chandra sir.. I urge to your goodself that I was ist waiting for mch paediatric surgery via ipu in rml hospital. The candidate who joined earlier has resigned today only and I came to know just today afternoon that he has resigned.. as I am frm jammu I cant join there right now though my draft is already lying there with ipu.. kindly give me some time.. so that I may be able to join tomorrow morning.. as the resignation by the abovesaid candidate was sudden and untimely without any prior information for the same...

Thanking you

Yours faithfully

*Dr.Rajnish Kumar
MBBS MS
GMC JAMMU*

4. Though no counter affidavit has been filed within the stipulated time of one week granted by this Court, counsel for respondent No.3, Ms.Suparna Srivastava states that she has instructions to the effect that one seat is still vacant in M.Ch (Paediatric Surgery) in 2014-2017. She has handed over a letter dated 18th November, 2014 written by the Registrar, Post Graduate Institute of Medical Education & Research, Dr.Ram Manohar Lohia Hospital, New Delhi-110001. The same is taken on record. The relevant portion of the said letter reads as under:-

“....it may be pointed out that one Dr.Ramendra Shukla, student of M.Ch (Paediatric Surgery) (Batch 2014-17) of this Institute had on the afternoon of 30th September, 2014 intimated his resignation from the course to enable his joining M.Ch in SMS Medical College, Jaipur. The resignation of the student was intimated by HOD (Paediatric Surgery) of this Institute to the Controller of Examinations of the GGSIP University, by e-mail, at 3.00 p.m. on 30th September, 2014 itself.”

5. Mr.Vaibhav Kalra, learned counsel for the respondent-University states that in the present instance the college was intimated of the vacant seat only on 14th October, 2014. He submits that in view of the Supreme Court judgment in ***Priya Gupta vs. State of Chattisgarh & Ors. (2012) 7 SCC 433*** the cut off date of 30th September, 2014 for admitting students cannot be breached by the University. He states that the deadline of 30th September, 2014 has once again been reiterated by the Supreme Court in ***Hind Charitable Trust Shekhar Hospital vs. Union of India and others, W.P(C) No.469/2014***. He lastly states that the petitioner has not approached this Court immediately.

6. Having heard learned counsel for the parties this Court is of the view that no fault can be attributed to the petitioner in the present case. Not only the petitioner holds first position in the wait list, but he had also approached this Court within a period of one month and in fact, within four days of receipt of the aforesaid certificate from HOD, Department of Neurosurgery, GMC/SSH, Jammu. Consequently, no delay or latches can be attributed to the petitioner.

7. In ***Asha vs. Pt. B.D.Sharma University of Health Sciences & Others, (2012) 7 SCC 389***, the Supreme Court after considering ***Priya Gupta*** (Supra) has held that even the cut off date stipulated for medical examination can be waived off in certain circumstances. The relevant portion of the aforesaid judgment is reproduced hereinbelow:-

"30. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer.

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32. Though there can be the rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. (Refer Arti Sapru v. State of J&K [(1981) 2 SCC 484 : 1981 SCC (L&S) 398] , Chhavi Mehrotra v. DG, Health Services [(1994) 2 SCC 370] and Arvind Kumar Kankane v. State of U.P. [(2001) 8 SCC 355]

(emphasis supplied)

8. This Court also finds it perplexing that though a vacancy had occurred before the cut off date had expired, the college and the University had not taken any steps to fill the same. Agreed that the vacancy arose at the last minute, but this Court is of the view that the respondent owed a duty to have put in place a mechanism to ensure that such a valuable seat does not go waste. Consequently, in the opinion of this Court, there has been a lapse on the part of the respondents in filling up a vacancy in a super speciality course.

9. This Court is also of the view that a valuable seat in a super speciality course cannot be allowed to go waste for the next three years merely for the reason that about two months have elapsed after the cut off date. In fact the Division Bench of this Court in **Manoj Kumar Dhaka vs. Union of India & Ors, LPA No.763/2012**, in similar circumstances, has after considering the entire law on the subject held as under:-

“16. The present is an equally hard case. The Super Specialty Course of DM (Cardiology) in PGIMER is not only prestigious but highly competitive. To secure admission therein is no mean task. The need of the country and the public at large for the doctors with said Super Specialty cannot be over emphasized. The course, we are informed is of three years duration out of which three months are admittedly over.

17. What falls for consideration is as to whether the aforesaid can fall in the category of rarest of rare cases as spelled out by the Supreme Court.

18. The appellant, for the delay, cannot be faulted with in any manner whatsoever. Though the learned Single Judge has observed that the appellant made out a wrong case than what emerged before the Court but the appellant could not be expected to have knowledge thereof. Though on the basis of the infrastructure available in the Department of Cardiology in PGIMER, four seats ought to have been allocated by GGSIPU, but GGSIPU on a wrong interpretation of Regulation 12(4) supra which was supported by MCI also before this Bench till 23rd November, 2012, allocated only three seats. We are unable to digest that such valuable seat should be allowed to go waste for the next three years merely for the reason of three months having elapsed.

19. These Super Specialty Courses are not classroom courses, though 80% attendance is informed to have been prescribed. The loss of three months in gaining hands-on practical-experience, we are sure, can always be compensated by extra hours put in by the candidate. It cannot be lost sight of that the appellant approached this Court without any delay and the writ petition was drafted on 5th July, 2012 itself and filed immediately thereafter, i.e. well before the last date prescribed for admission. Unfortunately the correct facts came to be revealed only through recording of the statement of the Registrar of PGIMER by the learned Single Judge. Had the view, as we

have taken, been taken immediately, the appellant would have been admitted well within the prescribed time.

20. We are further of the opinion that the decision of the GGSIPU to reject the request of PGIMER for the four seats in terms of amended Regulation 12(4) was wrong. Though PGIMER did not pursue the case but it cannot be lost sight of that it is a Government Institute with none being personally interested and it is ultimately the students who are the beneficiary of the courses which are being imparted and in our view they would have a cause of action against the wrongful denial/reduction of seats.

21. We are thus of the opinion that the facts of the present case justify admission at this stage.”

(emphasis supplied)

10. Consequently, the present writ petition is allowed and the petitioner is directed to be granted admission in M.Ch.(Paediatrics Surgery), PGIMER, Dr.R.M.L.Hospital for the session 2014-2017. If any procedural formalities are required to be fulfilled the same shall be complied with within a period of two weeks from today.

Order dasti.

MANMOHAN, J

NOVEMBER 19, 2014

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