

Court No. - 10

Case :- WRIT - C No. - 16963 of 2023

Petitioner :- Archana Chauhan

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Kashi Nath Shukla, Sneh Ranjan Shukla

Counsel for Respondent :- C.S.C., Ayank Mishra, Rohit Pandey, Saraswati Yadav, Shri Prakash Dwivedi, Subhash Ghosh

with

Case :- WRIT - C No. - 19247 of 2023

Petitioner :- Anjali Kharwar

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Braj Mohan Singh

Counsel for Respondent :- C.S.C., Rohit Pandey, Saraswati Yadav, Subhash Ghosh

Hon'ble Kshitij Shailendra, J.

1. Heard learned counsel for the parties.
2. These two writ petitions involve identical controversy and, therefore, are being decided by common judgment as counter and rejoinder affidavits have been exchanged between the parties.
3. For the purposes of judgment, Writ-C No.16963 of 2023 is being treated as leading petition.
4. The case of the petitioner is that she had applied for admission in B.Sc. Nursing Four Years Course Entrance Examination-2022 after deposit of requisite fees and joined the counselling process and was awarded certain marks, however, later on, she submitted her resignation on 21.12.2022 from Samarpan Institute of Nursing and Para-medical Sciences, Lucknow (the respondent no.5).

5. It is contended that facility to tender resignation was provided under the letter dated 17.12.2022 and the petitioner acted in consonance with the said requirement, however, the respondent no.5 failed to upload the resignation on the concerned portal, as a result whereof, the petitioner's name could not be included in the list of students circulated by the Director General of Medical Education on 28.12.2022 and, under such circumstances, the petitioner took direct admission in School of Nursing Fatima Hospital, Mau (respondent no.4).

6. The writ petition has been filed seeking a direction upon the respondents to allow the petitioner to participate in the examinations being conducted by School of Nursing Fatima Hospital, Mau (respondent no.4).

7. An interim order was passed in this case on 22.05.2023 whereby the respondents were directed to permit the petitioner to appear in examination, however, with a rider that the interim order shall not vest any right on her and the result shall not be declared without leave of the Court.

8. The respondent No. 5 has already filed a short counter affidavit admitting the fact that within the time fixed, the information pertaining to resignation tendered by the petitioner had not been uploaded, however reason has been assigned that in notification/letter dated 19.12.2022, there was no such direction for uploading. In this regard, learned counsel for the petitioner submits that notification/letter dated 19.12.2022 would not nullify the effect of previous letter dated 17.12.2022, in which there was a clear direction that concerned college would upload the resignation as per the time limit fixed.

9. The University has come up with the stand that since the petitioner did not enroll her in the Mop-up round and on the list published by the Institution, the name of the petitioner did not stand articulated, the University was justified in not allowing admission to the petitioner.

10. The respondent No. 4, Fatima College has come up with the stand that once the petitioner did not get admission for the reasons stated in the writ petition, the College directly facilitated admission to her as the seat was lying vacant with it.

11. Regarding non-registration in the Mop-up round, the learned counsel for the petitioner has referred to letters annexed along with the supplementary affidavit filed today, which have been issued by the respondent No. 2, Director General Medical Education and Training Uttar Pradesh at Lucknow stating that the students who had tendered resignation would not be entitled to apply in the Mop-up round.

12. In sum and substance, the argument advanced on behalf of the petitioner is that the petitioner strictly followed and obeyed the time line fixed for the steps taken at her end and if the respondent No. 5 is at fault or the University could not get information from respondent No. 5 and, for that reason, despite representation filed by the petitioner before respondent No. 2 on 30.12.2022, no decision was taken, the petitioner was well within her rights to approach another Institution, where the seat was vacant and, therefore, admission taken by the Fatima College, respondent No. 4 is according to law.

13. Learned counsel for the petitioner further submits that the admission of the petitioner has not been cancelled till today and she has already completed Ist Semester Course pursuant to the permission granted by this Court under interim order dated 22.05.2023.

14. At this stage, a dispute has been raised by the University by referring to the judgment of the Supreme Court in the case of **St. Stephens Hospital College of Nursing vs Union of India and others, Petition for Special Leave to Appeal (C) No(s). 10571 of 2022 dated 03.06.2022** and Ms. Shambhavi Tiwari, learned counsel holding brief of Shri Rohit Pandey, for the respondent-University submits that no admissions are permissible beyond the time limit fixed as per the said judgment.

15. On the other hand, learned counsel for the petitioner has placed reliance upon the following authorities:

"(i) Rajendra Prasad Mathur vs Karnataka Univeristy, 1986 AIR SC 1448

(ii) A. Sudha vs University of Mysore, 1987 AIR SC 2305

(iii) Ashok Chand Singhvi vs University of Jodhpur, 1989 AIR SC 823

(iv) Dolly Chhanda vs Chairman, 2004 AIR SC 5043

(v) Abha George & others vs All India Institute of Medical Sciences (AIIMS) and another, W.P (C) No. 12263 of 2021 and CM APPL. 38369 of 2021 dated 02.02.2022."

16. Learned counsel for the petitioner has laid much emphasis on paragraph no.7 of the judgment of the Apex Court in the case of **Rajendra Prasad Mathur (supra)**, which reads as follows:-

"7. We accordingly endorse the view taken by the learned Judge and affirmed by the Division Bench of the High Court. But the question still remains whether we should allow the appellants to continue their studies in the respective Engineering Colleges in which they were admitted. It was strenuously pressed upon us on behalf of the appellants that under the orders initially of the learned Judge and thereafter of this Court they have been pursuing their course of study in the respective Engineering Colleges and their admissions should not now be disturbed because if they are not thrown out after a period of almost four years since their admission their whole future will be blighted.

Now it is true that the appellants were not eligible for admission to the Engineering Degree Course and they had no legitimate claim to such admission. But it must be noted that the blame for their wrongful admission must lie more upon the Engineering Colleges which granted admission then upon the appellants. It is quite possible that the appellants did not know that neither the Higher Secondary Education of the Secondary Education Board, Rajasthan nor the first year B.Sc. Examination of the Rajasthan and Udaipur Universities was recognised as equivalent to the Pre-University Examination of the Pre-University Education Board, Bangalore. The appellants being young students from Rajasthan might have presumed that since they had passed the first year B.Sc. Examination of the Rajasthan or Udaipur University or in any event the Higher Secondary Examination of the Secondary Education Board, Rajasthan they were eligible for admission. The fault lies with the Engineering Colleges which admitted the appellants because the Principals of these Engineering Colleges must have known that the appellants were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We do not see why the appellants should suffer for the sins of the managements of these Engineering Colleges. We would therefore, notwithstanding the view taken by us in this Judgment allow the appellants to continue their studies in the respective Engineering Colleges in which they were granted admission. But we do feel that against the erring Engineering Colleges the Karnataka University should take appropriate action because the managements of these Engineering Colleges have not only admitted students in eligible for admission but thereby deprived an equal number of eligible students from getting admission to the Engineering Degree Course. We also endorse the directions given by the learned Judge in the penultimate paragraph of his Judgment with a view to preventing admission of ineligible students."

17. He has also placed reliance on paragraph no.16, 17 and 18 of the judgment of Delhi High Court in the case of **Abha George (supra)**:-

"16. The judgment of the Supreme Court in Ashok Chand Singhvi vs. University of Jodhpur and Ors: (1989) 1 SCC 399, is also on similar lines. In that case, the Supreme Court did not accept the explanation of the concerned university that the candidate had been mistakenly admitted, but also clarified that

even if that had been the case, the principle in Rajendra Prasad Mathur, would have been followed as the candidate was not at fault.

17. In Javed Akhtar, a co-ordinate bench of this Court considered a case where the petitioners' candidature was accepted for appearing in the entrance examinations, and they were admitted to the concerned institution. Their admissions were cancelled after they had attended the classes for one month. The facts of the case are very similar to the present case. The question framed by the Court was in the following terms:-

"21. ... This is not disputed that the petitioners filled the forms for appearing in the entrance examination and gave their correct date of birth. The forms of the petitioners were considered and they were allowed to appear in the examination. After their names appeared, they were called for counselling and after verifying the documents and certificates of the petitioners, they were given admission. The petitioners were issued identity cards after accepting the fees for the course from them and the petitioners were allowed to attend classes for a month and thereafter by communication dated 8th August, 2006 the admission of the petitioners have been cancelled. **Whether the respondent no. 1 can be allowed to cancel the admission mid term in the facts and circumstances, when the petitioners have not concealed any thing nor produced any documents to mislead the respondent no. 1? Whether the respondent no. 1 will be estopped from canceling the admission of the petitioners in the facts and circumstances?**"

The Court answered the question thus:-

"38. Therefore, **while granting the admission if the academic body has acted inattentively and mechanically, then they cannot be allowed to take the plea that the admission was never valid and that the petitioners' were ineligible from the very inception** and knowing the ineligibility they applied for admission. **The respondents cannot be allowed to cancel the admission at their own convenience at any time of the year without considering the fact that if they cancel the admission after the session has started then the entire year of the petitioners will be spoiled** as the petitioners would not be in a position to take admission in any other college/University. If this fact of their ineligibility for admission was conveyed to them at the very start they would have taken admission in some other college/University.

39. In such situation, in view of the decision in Sangeeta's case (Supra), **the petitioners cannot be penalized for the negligence of authorities.** It is important to appreciate that **the petitioners in the facts and circumstances cannot be accused of making any false statement or suppressing any relevant fact before anybody.** They clearly mentioned their Date of Birth in the application form for admission, and are not guilty of any fraud or misrepresentation. It was the duty of the University to have scrutinized the application form and the certificates thoroughly before granting admission to the petitioners and permitting them to attend the classes and not having done so they cannot cancel the admission thereafter. By accepting the application form and subsequently granting admission representation was made by the respondents that the petitioners' were eligible for admission and the petitioners' acting upon the same took admission and thus the petitioners' suffered a detriment. Had the respondents not made the representation that the application had been approved and granted admission the petitioners' would have applied and taken admission else-where. Therefore the respondents are estopped from pleading that the petitioners were not entitled to a seat from the inception and that the admission is void ab initio and that the admission without fulfilment of the eligibility criteria is a nullity.

40. In the facts and circumstances of the case **the respondents cannot be allowed to take advantage of their own wrong and cannot be permitted to take the plea that under the prospectus they had the power to cancel the admission of ineligible student** and the principle of estoppel will operate against them. The respondents are estopped from cancelling the admission of the petitioners' and further from preventing them from pursuing the 'Pre Tib' course in the present facts and circumstances."

18. Applying these authorities in the present case, it appears that the petitioners' documents were accepted by the respective centres of AIIMS, despite the fact that their qualifying examination results were declared one week later than stipulated in the Prospectus. The petitioners have prosecuted their studies for almost two months prior to issuance of the impugned OM dated 18.10.2021. There is no allegation that the petitioners had misrepresented or concealed any information from AIIMS - indeed, there cannot be, as the qualifying examination was conducted by AIIMS itself. Applying the

observations of the Supreme Court in Rajendra Prasad Mathur, in the present case also, the blame lies more upon the institution than the petitioners. The candidates applied; their results were declared by AIIMS, New Delhi; those results were submitted to the regional centres to which they have been assigned, and they were granted admission. Their admissions were cancelled after they had spent almost two months on the course. The judgment of this Court in Javed Akhtar, in fact, goes further to hold that an academic institution cannot be permitted to cancel admissions after the course had started, at any time during the year, due to prejudice that would be caused to the candidates who were admitted as they would by then be unable to take admission in any other university to which they may have been admitted."

18. In the aforesaid background of facts, the contention of the petitioner is that since the petitioner was not at fault in tendering the resignation and the entire problem has arisen on account of inaction on the part of the respondent no.5, the admission of the petitioner in School of Nursing Fatima Hospital, Mau should be saved.

19. In so far as the petitioner of Writ-C No.19247 of 20223 is concerned, there was no issue of tender of resignation involved, however, the dispute was that the petitioner directly took admission in School of Nursing Fatima Hospital, Mau.

20. Sri Rohit Pandey, learned counsel for the University, has placed reliance upon the judgment dated 06.02.2023 passed by Coordinate Bench of this Court in Writ-C No.760 of 2023, and submits that this Court, under somewhat identical circumstances, taking into consideration the judgments of the Supreme Court and the time-line fixed for admission upto 31.12.2022, has declined the prayers made before it by the concerned colleges.

21. Sri Pandey, by re-referring to the judgment of the Apex Court in **St. Stephens Hospital College of Nursing (Supra)**, has argued that the Apex Court, in clear words, has held that the time schedule for

admission to the educational institutions has to be strictly adhered to and the High Court in the concerned matter was justified in refusing to entertain the petitions and grant any relief to the concerned petitioner.

22. Distinguishing the judgments cited on behalf of Sri Pandey, the contention of the learned counsel for the petitioner is that the matter before the Apex Court was in relation to the granting extension to the mop up round to fill up the seats which is not the case here and, therefore, the judgment cited is distinguishable on facts. It has further been contended that whatever is the fault of the respondent no.5, even assuming that 31.12.2022 was the cut off date fixed for taking admissions, the petitioner having applied on 30.12.2022, no decision was taken by the concerned respondent and due to lapses on the part of all the respondents, the petitioner cannot be made to suffer and, therefore, the admission taken by her in School of Nursing Fatima Hospital, Mau should be saved.

23. Learned Standing Counsel has placed reliance upon an order dated 25.08.2023 passed by the Apex Court in S.L.P. (Civil) No.17469 of 2023, National Commission for Homeopathy Vs. Swanirbhar Homeopathic Medical College Sanchalak Mahamandal Gujarat State & others, by which the Apex Court has deprecated the approach of the High Court in granting admissions by issuing interim orders. The order of the Apex Court is quoted herein below:-

"1. This Court has time and again deprecated the practice of directing admission by interim orders.

2. However, since the High Court has stated that the admissions shall be subject to the outcome of the present petition, we are not inclined to interfere, though we deprecate such a practice.

3. In the facts and circumstances, the High Court is requested to decide the petition as expeditiously as possible and in any case within a period of six weeks from today.

4. With the above observations and directions, the special leave petition is disposed of.

5. Pending application(s), if any, shall stand disposed of."

24. Sri Rohit Pandey with regard to the authorities cited by the petitioner submits that in those matters, the issue of eligibility of the candidates concerned was involved and under those circumstances it was observed that if the eligibility was not assessed at the right time, subsequent revealing of deficiency would not penalize the concerned student, however, in the present case, the issue of expiry of the maximum time limit fixed for taking admission and following the procedure designed by D.G.M.E. is involved and hence, according to him, the judgments cited are distinguishable on facts.

25. Having heard the learned counsel for the parties, this Court is of the considered opinion that though the respondent no.5 was at fault in not taking any steps to upload the resignation tendered by the petitioner (Archana Chauhan) within time fixed, the time schedule fixed by the Apex Court upto 31.12.2022 cannot be extended by this Court directly or indirectly.

26. The petitioner's case may be hard on facts, however, in case the Court facilitates taking admissions by the private institutions by interpreting the judgments of the Apex Court in either way depending upon the circumstances which suit to the concerned candidates, it will give rise to a situation where the entire procedure designed by the D.G.M.E. would be given a complete go by and in that case admissions would be facilitated by private institutions contrary to the said guidelines and, further, chances of manipulations cannot also be ruled out.

27. Though the petitioner may have a case on its own merits but considering the overall circumstances, particularly the judgment of

Coordinate Bench of this Court in Writ-C No.760 of 2023 as well as Apex Court in **St. Stephens Hospital College of Nursing (Supra)**, the Court is not inclined to attach sanctity to the petitioner's admission in School of Nursing Fatima Hospital, Mau (respondent no.4) as it would have a far reaching repercussions.

28. Both the writ petitions are, accordingly, **dismissed**.

Order Date :- 8.11.2023

AKShukla/-