

Court No. - 7

Case :- WRIT - C No. - 9561 of 2023

Petitioner :- Yatin Kumar

Respondent :- State Of U.P. Deptt. Of Medical Education Thru. Prin. Secy. Lucknow And 2 Others

Counsel for Petitioner :- Sunil Sharma, Anshuman Srivastava, Mohd. Murtaza Hasan

Counsel for Respondent :- C.S.C., Abhinav Trivedi

Hon'ble Abdul Moin, J.

1. Heard Shri Sunil Sharma, learned counsel for the petitioner, learned Standing counsel appearing for respondent nos.1 and Shri Abhinav Narayan Trivedi, learned counsel for respondent no.2.

2. There is a consensus at Bar that the matter is squarely covered by the judgment of this Court passed in **Writ C No.9516 of 2023 in Re: Atul Yadav Vs. State of U.P. and Others** on 31.10.2023.

3. At this stage, Shri Sunil Sharma, learned counsel for the petitioner states that the Apex Court has passed an order dated 30.10.2023 in **Miscellaneous Application No.2166 of 2023 in Writ Petition (C) No.76 of 2015 in Re: Ashish Ranjan & Ors. Vs. Union of India & Ors.** per which upon an application being filed by the Secretary, Ministry of Health & Family Welfare and the Director General of Health Services of Union of India pertaining to MBBS Degree course seats still lying vacant across all States as on 25.10.2023, the Hon'ble Supreme Court bearing in mind the element of public interest in filling up the unfilled seats, allowed the miscellaneous application by permitting the appellants to conduct a Special Stray Vacancy Round for which purpose an extension of two

weeks for NEET(UG)-2023 counselling in the All India Quota was granted.

4. For the sake of convenience, the order dated 30.10.2023 is reproduced below:

"MA No 2240 of 2023

1 De-tagged.

2 List the Miscellaneous Application on 06 November 2023.

MA Diary No 54004 of 2023

3 On being mentioned by Ms Aishwarya Bhati, the Miscellaneous Application is taken on Board.

4 The Miscellaneous Application has been moved by the Secretary, Ministry of Health and Family Welfare and Director General of Health Services of the Union of India.

5 We have heard Ms Aishwarya Bhati, Additional Solicitor General in support of the Miscellaneous Application.

6 It has been stated in paragraph 4 of the Miscellaneous Application that 2182 seats for the MBBS Degree course are lying vacant across all States as on 25 October 2023. The Union of India has received representations from all the States for permission to fill up these seats. Hence, the relief which has been sought in the Miscellaneous Application is in the following terms:

"(i) Permit the Applicants to conduct an additional round (i.e., Special Stray Vacancy Round) by granting an extension of 02 weeks for NEET (UG)-2023 counselling in All India Quota and allowing modification in the existing Scheme and schedule as approved by this Hon'ble Court vide its Order dated 18.01.2016 passed in I.A. Nos. 7 & 8 In W.P. (C) No. 76 of 2015 in the interest of justice."

7 Bearing in mind the element of public interest in filling up the unfilled seats, we allow the Miscellaneous Application by permitting the applicants to conduct a Special Stray Vacancy Round for which purpose an extension of two weeks for NEET(UG)-2023 counselling in the All India Quota shall stand granted.

8 The Miscellaneous Application is accordingly allowed in the above terms.

9 MA Nos 2166 and 2238 of 2023 shall also stand disposed of, in view of the above order."

5. Shri Sharma argues that as the Hon'ble Supreme Court has

now permitted the Special Stray Vacancy Round and the Special Stray Vacancy Round, so far as it pertains to the State of U.P., is going to be conducted from tomorrow i.e. 02.11.2023 as such even the petitioner be allowed to participate in the said stray vacancy round.

6. Responding to that, the contention of Shri Abhinav Narayan Trivedi on the basis of instruction is that the entire counseling is governed by the policy dated 13.07.2023 issued by the State Government for the purpose of admission in the MBBS course. As per clause 10 of the policy, though it pertains to the Mop-up round, yet only those candidates were permitted to appear in Mop-up round who had not been allotted any seats in the first and second round of counseling.

7. Shri Trivedi states that the same policy is being followed even with respect to the stray vacancies, consequently considering that the petitioner had already been allotted a seat in the respondent no.3 Institute in the instant petition, he cannot be permitted to participate in the said counseling. He further states that any order issued by this Court may virtually amount to opening a Pandora's box and flooding the docket of this Court with litigation being filed by the similarly circumstanced candidates.

8. Considering the aforesaid, more particularly, when the policy for the purpose of counseling for the stray round is the same policy dated 13.07.2023 which is being followed by the respondent no.2, which provides that those candidates who have been allotted a seat in the first and second round of counseling would not be permitted to participate in the mop-up round and the said policy would also be applicable with respect to the stray vacancy round and admittedly, the petitioner having been allotted the respondent no.3 Institute in the second round of

counseling, consequently this Court cannot issue any direction for the purpose of permitting the petitioner to participate in the stray round of counseling considering the policy dated 13.07.2023 and the policy itself having not been challenged by the petitioner.

9. Accordingly, the writ petition is dismissed.

10. Let a certified copy of this order be provided to learned counsel for the parties today itself on payment of usual charges.

Order Date :- 1.11.2023

S. Shivhare