

Neutral Citation No. - 2023:AHC-LKO:78525-DB**Court No. - 1**

Case :- SPECIAL APPEAL DEFECTIVE No. - 901 of 2023

Appellant :- State Of U.P. Thru. Prin. Secy. Medical Education And Training , Lko. And Another

Respondent :- Dr. Rahul Jaiswal And Others

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- Himanshu Hemant Gupta

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

Order on the application for condonation of delay (C. M. Application No. 1 of 2023)

- (1) Heard Sri Mohit Jauhari, learned Standing Counsel appearing for the appellants/respondents and Sri Himanshu Hemant Gupta, learned counsel for the respondent Nos.1 to 9/petitioners.
- (2) This intra-Court appeal filed under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 has arisen out of the judgment/order dated 15.07.2022 passed in Writ-A No.10734 of 2021 whereby the writ court has allowed the writ petition filed by the respondents/petitioners with certain directions.
- (3) In view of delay in filing the Special Appeal, an application for condonation of delay supported with an affidavit has been filed. However, Office has reported that there is a delay of 460 days in filing the present Special Appeal.
- (4) Considering the asseverations made in the affidavit filed in support of an application, the application for condonation of delay (C. M. Application No. 1 of 2023) is **allowed** and the delay in filing the appeal is condoned.
- (5) Office is directed to allot a regular number to the instant Appeal.

Order on appeal

- (6) Learned Standing Counsel appearing for the appellants/ respondents has submitted that except respondent/ petitioner Nos.1, 2, 4 & 7, rest of the respondents/petitioners had submitted their joining at the place of their posting in the year 2021. Even if the respondents/petitioners are given an audience for fresh counselling as regards their posting, no fruitful purpose would be served to undertake such an exercise for want of any objection by the persons who have already joined.
- (7) On the other hand, learned counsel appearing for the respondent Nos.1 to 9/petitioners Nos.1 to 9 has submitted that since the posting of the candidates has not been done as per the guidelines framed by the State Government, the order passed by the learned Single Judge is perfectly just in all respects.
- (8) On consideration of the submissions made by the learned counsel for both the parties, we are of the opinion that all the respondents/petitioners are selected candidates and for the purposes of posting, the counselling may or may not be mandatory. In not doing so, no right would accrue to the selectees to opt for posting at a specified place, but in the exigencies of service, when the entire world was quivering with COVID – 19 Epidemic, appointment/posting orders dated 19.04.2021 have been issued to all 106 candidates commensurate to their merit/ranks and other criteria through the Public Service Commission with a stipulation that they should report for duty immediately, otherwise their appointment letters will be rejected.
- (9) Since a direction has been issued by the learned Single Judge while allowing the writ petition to hold counselling with regard to the petitioners in terms of Government Order dated 18th September, 2020 and 1st April, 2021, interest of justice would suffice, if the respondents/petitioners move a representation, if

they so choose, before the authority concerned raising their grievance, as they have already completed 2 ½ years tenure at the place of posting. If it is preferred by the respondents/petitioners before the authority concerned, the same shall be considered and decided by the authority concerned sympathetically.

- (10) With the aforesaid modification of the impugned judgment and order dated 15.07.2022 passed in Writ-A No. 10734 of 2021, the Special Appeal is **partly allowed**.

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[Om Prakash Shukla, J.] [Attai Rahman Masoodi, J.]

Order Date :- 22.11.2023

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