

CWP No.12497 of 2015

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.12497 of 2015
Date of decision:13.07.2015**

Dr. Paramdeep Garg and another ...Petitioners
Versus
State of Haryana and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. S.S.Narula, Advocate,
for the petitioners.

Mr. R.K.S. Brar, Addl. A.G., Haryana.

Mr. Amit Rao, Advocate, for
Mr. Anurag Goyal, Advocate, for respondent no.4.

Mr. Vivek Singla, Advocate,
for respondent no.5.

Mr. Yagyadeep, Advocate,
for respondent no.6.

Rakesh Kumar Jain, J.

The petitioners are the Medical Officers of the Haryana Civil Medical Services (HCMS). They cleared AIPGMEE/AIPGDEE-2015 exam, conducted by respondent no.6, in the HCMS reserved seats for admission to MD/MS/PG Diploma courses and were at Sr. No.28 and 30 respectively in the revised/modified/provisional merit list in their category. They appeared for the first counselling on 31.03.2015 at Pt. B.D.Sharma University of Health Sciences, Rohtak (respondent no.3). Petitioner no.1

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was admitted in the Diploma (Anesthesia) and petitioner no.2 was admitted in M.D. (Radiotherapy) in the college of respondent no.3. They obtained No Objection for admission from the Director General of Health Sciences, Haryana (respondent no.2) on 26.05.2015 and 27.05.2015 respectively. In the 2nd counselling dated 05.06.2015, the petitioner no.2 was admitted in MS (General Surgery) and both joined their respective courses at the college of respondent no.3. However, in the 3rd and final counselling, both the petitioners were selected for MD (Anesthesia) course being taken up in the Command Hospital, Chandimandir and an order was issued in this regard on the same date by the Chairman of the Admission Committee of respondent no.3. The petitioners immediately reported at the Command Hospital, Chandimandir on 11.06.2015 to attend the classes but they were not permitted to join and were advised to wait till respondent no.4 receives concurrence from the office of the DGAFMS, New Delhi. In the meantime, the seats vacated by the petitioners in the college of respondent no.3 were offered to the candidates in the waiting list. The petitioners, being in-service candidates, are sponsored for postgraduate course by their employer, hold lien on their posts as Medical Officers and their anxiety is that if they are not permitted to join the Postgraduate Medical Course at the Command Hospital, Chandimandir, then they would be considered absent from duty and in case of their failure to complete the course, they would have to indemnify the respondent no.3 with a sum of ₹5 lacs. The petitioners have, thus, prayed for issuance of a writ in the nature of *mandamus*, directing respondent no.4 to allow them to join the course of

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MD (Anesthesia) in which they have already been admitted in the counselling held on 10.06.2015 in the category of HCMS in-service candidates.

After notice, replies have been filed by respondents no.1 and 2, 3, 4 and 5. It is alleged by respondent no.3 that a letter dated 10.06.2015 was received from Brig. Manu Arora, Dean & Dy. Commandant, Command Hospital, Western Command, Chandimandir, Haryana, about the availability of PG seats in different disciplines, namely, MD (General Medicine)-02 seats, MS (General Surgery)-03 seats, MS (Oph)-01 seat and MD (Anesthesia)-02 seats and a request was made by respondent no.4 to respondent no.3 that these seats may be offered to the HCMS officers through their University. Accordingly, 2 seats of MD (Anesthesia) were offered by respondent no.3 to the petitioners and they were shifted from PGIMS, Rohtak. Thus, the ball was in the court of respondents no.4 and 5 who have averred in their reply that the petitioners have been asked to wait because of the pendency of a case W.P.(C) No.4719 of 2015, titled as “**Maj. Saurabh Aggarwal (Retd.) and ors. vs. Union of India & ors.**” in the Delhi High Court, otherwise the averments made in the present petition by and large remained undisputed.

Counsel for the petitioners has submitted that the order dated 19.05.2015 produced by respondents no.4 and 5 in the Court has no relevance insofar as the facts and circumstances of the present case are concerned because that writ petition was filed by the Ex-Servicemen, which is a category lower than the petitioners, who are Medical Officers in the

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Government organization/State of Haryana.

I have heard learned counsel for the parties and examined the record with their able assistance.

Indubitably, 2 seats in the MD (Anesthesia) course in the Command Hospital, Chandimandir, were offered to be filled up from the HCMS officers through respondent no.3 as per letter dated 10.06.2015 (Annexure R-3/1). The admission committee of respondent no.3 found both the petitioners eligible for admission in the MD (Anesthesia) course in the Command Hospital, Chandimandir, shifted from their institution and the seats vacated by the petitioners have already been offered to the candidates in their category who were in the waiting list. Respondents no.4 and 5 are not offering admission to the petitioners only because of the reason of the pendency of the litigation in **Maj. Saurabh Aggarwal's (supra)**.

The question, thus, would be as to whether the said litigation in **Maj. Saurabh Aggarwal's (supra)** has any relevance to the present case. In the said case, the petitioners have challenged the notification dated 05.05.2015 for physical counselling for priority IV category candidates, insofar as it restricts the eligibility to participate in the counselling to only those candidates who were not offered/allotted seats during the three rounds of online counselling held earlier. Paragraph 3 of the "Information Bulletin for Post Graduate Courses in AFMS Institutions AIPGMEE-2015" provides for the priority for admissions to PG course and the said paragraph, extracted from the order dated 19.05.2015, passed in the aforesaid case, is reproduced as under:-

“PRIORITY/CATEGORY FOR ADMISSION

3. Admission for PG studies are strictly governed by Govt. of India, Ministry of Defence letter No.F/PC-8510/DGAFMS/DG-1/345/2013/D/(Med) dated 6th March 2013. The admission and training is controlled by the Office of the DGAFMS in accordance with prevalent rules. The priority for admission of candidates is as follows:-

(a) **Priority-I-AFMS** Officers detailed on advance specialist course/other courses as per guidelines of MCI/NBE.

(b) **Priority-II-** Foreign students sponsored by Government – On approval of DGAFMS/MOD/MEA subject to conditions laid down by the Govt. of India and AFMS officers selected for study leave.

(c) **Priority-III-** Medical Officers sponsored by Para Military Organization/Govt. Organization, Sponsorship certificate by the sponsoring authority is mandatory requirement for the candidate to be considered for counselling.

(d) **Priority-IV-Ex.-SSC AMC** Officers released from service after completion of contractual service and within three years after their release from service. SSC AMC Officers in their last year of contractual service are also eligible to apply for this category.

(i) The date of release **should not be before 01 May 2012 or after 30 Apr 2015** for the session starting in May 2015.

(ii) SSC officers in the last year of contractual service and still not released from service on the day of examination must have had the explicit permission of the DGAFMS for appearing in the

written examination (AIPGMEE-2015). At the time of admission to any college, they should also produce documentary proof of their attaining Ex-SSC status by 30 Apr 2015 without which they will not be considered for admission to the college.

(iii) Officers who have resigned their commission/dismissed/removed from service/not completed their contractual service are NOT eligible under this category. Such officers are also not eligible as Priority V candidates.

(e) **Priority-V-Civilian** candidates willing to serve in the Armed Forces Medical Services (AFMS) subject to their fulfilling the eligibility criteria mentioned in para 7 below. Civilian candidates will have to **submit a bond agreement to pay a sum of 26 lacs to Govt. of India at the time of admission in case they are unwilling to join AFMS when offered commission.** They also have to be medically fit to the standards required for commission in the AFMS at the time of admission. Officers of the AFMS who have resigned their commission or not completed contractual service as SSC officers are not eligible to be considered even as Priority-V candidates, though they may be below 35 years of age.”

As per the system followed by respondents no.4 and 5, 3 counselling sessions are held for each priority category and the seat remaining vacant at the end of the third counselling session are then offered to the next category in the order of priority. Since the petitioners fall in the Priority-III category, being Medical Officers of the Government organization/State of Haryana, shall have to consume the seats offered to

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them prior to the candidates of Priority-IV category, therefore, the said litigation in **Maj. Saurabh Aggarwal's case** has no effect on the admission of the petitioners in which even the Court had issued an interim direction to the respondents to file an affidavit indicating the modality of counselling to be adopted in future.

Thus, in view of the aforesaid facts and circumstances, the reason given by respondents no.4 and 5 for keeping admission of the petitioners in abeyance is unreasonable and arbitrary and is not germane to the facts and circumstances of the present case. Hence, the present writ petition is hereby allowed and respondents no.4 and 5 are directed to permit the petitioners to join the MD (Anesthesia) course forthwith.

July 13, 2015
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(**Rakesh Kumar Jain**)
Judge