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

+ **W.P.(C) 6856/2015 & CM No.12550/2015**

BOORUGLA MEHER THEJ

..... Petitioner

Through: Mr. Naresh Kaushik and Ms. Amita
Kalkal, Advs.

versus

**ALL INDIA INSTITUTE OF MEDICAL
SCIENCES AND ANR.**

..... Respondents

Through: Mr. Raj Kumar Gupta and
Mr. Mukesh Kumar Singh, Advs.
for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

10.12.2015

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1. This writ petition is directed against order dated 11.5.2015, whereby the respondent Nos.1 and 2, which in effect, represent the All India Institute of Medical Science (hereinafter referred to as the AIIMS), rejected the petitioner's application for reinstatement to the Post Graduate course in M.Ch. in Neurosurgery (in short the course).
2. The impugned order goes on to state that the petitioner's suspension qua the said course will continue to stand till, final outcome is reached in the criminal case, pending against the petitioner.
3. In order to adjudicate upon the writ petition, the following, broad facts, are required to be noticed.
- 3.1 The petitioner sat in the All India Entrance Examination for the aforementioned course. He was declared successful on 20.12.2013 and, in

order of merit, he obtained 32nd rank.

3.2 The duration of the course is six (6) years.

3.3 Evidently, on 27.2.2015, the petitioner, was arrested in connection with an FIR bearing No.231 of 2015 of even date, i.e. 27.2.2015, lodged under Sections 376/342/370/370(A)(I)/34 of the Indian Penal Code, 1860 (in short the IPC) and Sections 4 and 5 of the Immoral Traffic Prevention Act, 1956. This FIR, was registered at Police Station (P.S.) Hauz Khas, New Delhi.

4. It may be relevant to note that as a part of the course, the petitioner was also engaged, albeit on a contractual basis, as a Junior Resident Doctor.

5. On account of the FIR being lodged against the petitioner, his contractual engagement as a Junior Resident was suspended, vide order dated 14.3.2015, issued by the Registrar, AIIMS.

5.1 The reason set out in the order dated 14.3.2015, was that, the petitioner had undergone imprisonment for more than forty eight hours and, therefore, the suspension had to follow in the ordinary course. The aforementioned order of suspension, furthermore, stated, that the petitioner will draw for the first three months, subsistence allowance equal to the leave salary which he would have drawn if, he had been on leave on half average pay or half pay. The order also indicated that in addition to the subsistence allowance, the petitioner, will also be entitled to draw dearness allowance on the basis of the amount crystallised as subsistence allowance.

6. Evidently, the petitioner did apply for a regular bail which was granted to him by this court vide order dated 16.4.2015.

7. Upon the petitioner having been granted bail, he approached the Registrar, AIIMS vide application dated 21.4.2015, for reinstatement,

subject to the final judgment of the concerned criminal court.

7.1 By this application, the petitioner sought two reliefs: first, that the order of suspension be revoked, and second, that he may be allowed to continue with the course.

7.2 Insofar as the second relief is concerned, that was dealt with by the AIIMS vide the impugned order, to which, I have made a reference above. Since, the petitioner did not get the requisite relief from AIIMS, in respect of his request for being allowed to continue with the aforementioned course, he has approached this court by way of the instant writ petition.

8. Notice in this writ petition was issued on 21.7.2015. Since, then, counter affidavit has been filed on behalf of AIIMS. Counsel for the parties advanced their arguments largely, in line with the pleadings and documents filed in this court.

9. Briefly, it is the submission of Mr. Kaushik, who appears for the petitioner, that, the criminal trial, will take far too long and, therefore, in the meanwhile the petitioner be permitted, in the very least, to continue with the course, which has a duration of six (6) years. It is learned counsel's submission that given the age of the petitioner, deferring this aspect of the matter till after completion of trial, will ruin his career if, there is one to be saved after the conclusion of the criminal trial.

10. On the other hand, Mr. Gupta submits (albeit, that based on the contents of prospectus issued for the course) that to ensure students adhere to discipline is, one of the duties that the institution has to perform and, it is in furtherance of that duty that the institution (i.e. the AIIMS), cannot permit the petitioner to continue with the course.

10.1 In other words, according to the learned counsel, any practice or act

whether verbal or otherwise which is derogatory of women is an act of indiscipline. The learned counsel went on to submit, if that be so, it could be dealt with only in accordance with the mechanism set forth in the prospectus, which is, via the Anti Sexual Harassment Monitoring Committee (ASHMC). In support of his submission, Mr. Gupta, relied upon clause 4 (i)(1) (d), 4(i)(4)(b), 4(i)(4)(d) and 4(iii) of the prospectus.

11. Mr. Gupta, also submitted, that one of the ways out of this logjam would be that the petitioner could approach the ASHMC, and that, thereafter, the said body could take a decision as to whether, in the given circumstances, the petitioner should be allowed to continue with the course.

12. Mr. Gupta says that, short of the aforesaid approach, the petitioner cannot be allowed to continue with the course in view of the allegations levelled against him.

13. Having heard the learned counsels for the parties and perused the record, according to me, the situation presented before the court is rather peculiar and a difficult one, which, does not necessarily have a simple answer. There are two competing interests before the court: one, the interest of the petitioner whose conduct is assailed based on an allegation; an allegation which has to pass the rigour of proof beyond reasonable doubt, and the other, interest of the institution, which, includes its reputation, and as also the interest of other students.

14. Before I proceed further, let me deal with the submission of Mr. Gupta that the provisions of clause 4 (i)(1) (d), 4(i)(4)(b), 4(i)(4)(d) and 4(iii) apply in the petitioner's case and therefore, he should, in the first instance, approach the ASHMC. In my view, this submission cannot be accepted for the two reasons. First, there is no complaint filed with the

ASHMC. The process under clause 4 can get triggered, as is evident, upon reading clause 4(iii) of the prospectus, only upon the person aggrieved approaching it, for redressal of grievance. Second, the criminal process, based on the FIR, has already been triggered qua the petitioner. The petitioner is facing trial in the matter and therefore, the final consequences will emanate qua the petitioner, only on, conclusion of the trial. This aspect has been adverted to in the impugned order, as well.

15. The record shows that the incident took place on 26.2.2015. Though, a charge sheet has been filed, I am told by counsels, no charges have been framed, as yet. At the point in time when, the incident occurred, the petitioner, had already participated in the course for about a year and two months. The duration of the course, as noticed above is six (6) years, and will, ordinarily, conclude in 2019 in so far as the petitioner and his batchmates are concerned.

15.1 In the criminal trial, as noticed above, the petitioner is arrayed as one of the accused.

15.2 Therefore, in so far as the petitioner is concerned, there are two possibilities; either he gets convicted or he stands acquitted.

15.3 In the event the petitioner is convicted, the petitioner would be entitled in law to carry the matter further. In case the petitioner is acquitted, the prosecution would have that liberty. Either way, as things stand today, criminal proceedings will, possibly, not come to an end prior to 2019.

16. By virtue of the impugned order, AIIMS, has indicated quite clearly that the petitioner cannot be allowed to join the course “till the final outcome of the criminal trial”. Therefore, this court is faced with a situation, which is: should this court deny the petitioner’s request to continue with the aforesaid

course.

17. To my mind, the answer to this problem can only be that the petitioner should be allowed, albeit provisionally, for the moment, to continue with the course subject to the AIIMS being allowed to put in place the necessary safeguards which, it may deem fit in the best interest of the institution. It is ordered accordingly.

18. I may further add that in case the petitioner were to pass the aforementioned course and for some reason the criminal proceedings were not, to come to an end, the petitioner would, in that circumstance, be issued only, a provisional certificate, with a clear caveat that in case the petitioner gets convicted, the certificate would be liable to be withdrawn.

19. Mr. Kaushik, on the instruction of his client, who is present in court today, is agreeable to such a condition being imposed on the petitioner.

20. I may also indicate that Mr. Gupta had, during the course of the argument, stated that the order of suspension of the petitioner as a Junior Resident Doctor, had not been challenged.

21. Mr. Kaushik, learned counsel for the petitioner, says that this decision was taken, consciously, as the petitioner, wanted to limit the relief for grant of an appropriate order, which would enable him to continue with his education till he establishes his innocence in the ensuing criminal case.

22. As indicated above, it is reiterated that if, the petitioner is convicted, and he passes the aforesaid course, he will not claim any equity on that score.

22.1. Mr. Kaushik says that the petitioner does not intend to challenge the suspension order dated 14.03.2015 till the criminal case stands concluded.

23. With the aforesaid observations, the writ petition is disposed of.

24. Dasti.

DECEMBER 10, 2015
s.pal

RAJIV SHAKDHER, J