

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

**CWP No.10074 of 2016
Decided on :20.10.2016**

Dr. Sanjay Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Madan Pal, Advocate for the petitioner.

Mr. Gaurav Jindal, Addl. AG, Haryana
for respondents No.1 to 3.

Mr. Ramesh Hooda, Advocate
for respondents No.4 to 6.

Mr. Anil Ghanghas, Advocate for
Mr. Rajesh K. Sheoran, Advocate for respondent No.7.

G.S. Sandhawalia, J. (Oral)

The petitioner seeks admission in the MD/MS Course in the field of Psychological Medicine in Psychiatry Department with respondent No.4-University.

The pleaded case of the petitioner is that he has passed his MBBS in the year 2006 and working as Medical Officer at PHC, Tatka, District Kurukshetra. He had joined as HCMS in the year 2008. On account of the written test conducted on 08.12.2015 of AIPGMEE-2016, whereby he had scored 926.2702, he was entitled for consideration in the said course. As per the provisional merit list drawn up (Annexure P-1), he was at Sr. No.22. Respondents No.7 and 8 were at Sr. No.41 and 46 have obtained 810.3693 and 796.3289, respectively. He had applied for the NOC through proper channel, as per the criteria and his application had been forwarded to the Civil Surgeon, Kurukshetra on 12.01.2016 (Annexure P-2) alongwith four others.

It is the case of the petitioner that on account of the inaction of the respondents in processing the NOC, the same was only granted on 12.04.2016 (Annexure P-4), whereas there are instructions that they have to be dealt with within 3 days, but it was only dealt by the Director General Health Services on 11.04.2016. The NOC was accordingly granted on 12.04.2016, on which date the first counselling was also held and on account of the fact that he did not have the NOC, he was not considered eligible. Resultantly, respondent No.7 was granted the admission.

The said fact is also not disputed by the State. The State in its reply also admitted that out of the four doctors, the NOC had been forwarded for three cases. The other two had been granted the benefit prior in time, but on account of the consolidation of the files, the petitioner's case had been wrongly forwarded to Civil Surgeon, Rohtak, which has also been demonstrated by the petitioner by placing reliance upon various documents. Eventually, NOC was sent to the petitioner vide communication on 18.04.2016 (Annexure P-5). The second counselling was held on 19.05.2016 in which the petitioner admittedly was present, but did not opt, since there was no vacancy as such for the specialty he wanted admission in.

In the meantime also, he approached this Court and his case came up for hearing on 20.05.2016. Thereafter, the final counselling was held on 31.05.2016 in which the petitioner was not present, which would be clear from Annexure R-4/5 and was shown as absent. Resultantly, on

account of the fact that respondent No.7 had vacated the seat, respondent No.8 Dr. Vipin Kumar Aggarwal got admission against the vacancy, which had been created, on account of respondent No.7 Mr. Manish Kumar leaving. The petitioner, thereafter, amended the writ petition for impleading respondent No.8. It is the admitted case that now respondent No.8 has also left the said course, who was also lower in merit.

The objection raised by the respondent-University is that the vacant seats had to be offered as per the merit alongwith weightage and on account of the absence of the petitioner on that day, he was not granted the benefit and the same was given to respondent No.8.

Counsel for the petitioner has thus vehemently submitted that on account of the fault of the respondents in issuance of NOC belatedly, he was left out as he would have been eligible on the strength of the merit on the first date, which was 12.04.2016.

There is no dispute regarding the above issue that the petitioner is higher in merit and would have been entitled in all normal circumstances for the admission to the said course on the first date itself had the State issued the NOC expeditiously. But the fact remains that for the reasons best known to him, he choose not to appear on 31.05.2015, which is the cut-off-date fixed for admission to the Post Graduate Courses, as per the regulations and as per the judgment passed by the Apex Court in '**Mridul Dhar (minor) and another Vs. Union of India and others' 2005 (2) SCC 65**. Once the cut-off-date has gone, the petitioner is thus not entitled for admission at this stage.

Counsel for the petitioner has submitted that the petitioner should have been adjusted and notice should have been issued to him on 31.05.2016 as the petition was already pending.

The said submission cannot be accepted. The terms of the prospectus (Annexure R-4/1) are clear that the candidate has to be present on the date of concerned and personal appearance was compulsory as per Clause-xv. The petitioner should have been present on 31.05.2016 and would have been adjusted accordingly in view of the higher merit. The respondents have chosen to fill up the seat with the candidate lower in merit who was present on account of the absence of the petitioner.

Reliance has accordingly been placed upon the judgment passed in '**Asha Vs. Pt. B.D. Sharma University of Health Sciences and others'** 2012 (3) SCT 457 to submit that on account of the fault of the respondents, the petitioner can be adjusted for the next year.

At this stage no admission can be granted, keeping in view the fact that more than four and half months have gone by in a specialty course, as per the law laid down in the judgment passed in **Mridul Dhar (supra)**.

The argument of the petitioner that the admission be granted in the next year by placing upon judgment in '**Aman Deep Jaswal Vs. State of Punjab and others'** 2006 (2) SCT 110 also cannot be accepted, keeping in view the judgment of the Apex Court in '**Faiza Choudhary Vs. State of Jammu and Kashmir'** (2012) 10 SCC 149, wherein it has been held that by filling up the seat for the next year by candidates from

the earlier year, the other candidates would loose their right. The relevant part reads as under:-

“14. A medical seat has life only in the year it falls that too only till the cut-off date fixed by this Court i.e. 30th September in the respective year. Carry forward principle is unknown to the professional courses like medical, engineering, dental etc. No rule or regulation has been brought to our knowledge conferring power on the Board to carry forward a vacant seat to a succeeding year. If the Board or the Court indulges in such an exercise, in the absence of any rule or regulation, that will be at the expense of other meritorious candidates waiting for admission in the succeeding years.

*15. The Medical Council of India Act provides that admission can be made by the medical colleges only within the sanctioned capacity for which permission under Section 10A/recognition under Section 11(2) has been granted. This Court in **State of Punjab and Others v. Renuka Single and Others 1994(1) S.C.T. 636 : (1994) 1 SCC 175**, held that the High Court or the Supreme Court cannot be generous or liberal in issuing such directions which in substance amount to directing authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students. In **Medical Council of India v. State of Karnataka 1998(3) S.C.T 394 : (1988) 6 SCC 131**, this Court held that the number of students admitted cannot be over and above that fixed by the Medical Council as per the Regulations and that seats in the medical colleges cannot be increased indiscriminately without regard to proper infrastructure as per the regulations of the Medical Council. In **Medical Council of India v. Madhu Singh and Others 2002(4) S.C.T. 444 : (2002) 7 SCC 255**, this Court held that there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year. Recently, this Court in **Satyaprata Sahoo and Others v. State of Orissa and Others JT 2012 (7) 500** has reiterated that it would not be possible to increase seats at the expense of candidates waiting for admission in the succeeding years.*

16. Learned senior counsel appearing for the appellant referred to

few judgments of this Court stating that this Court had previously given certain directions to accommodate candidates in the succeeding years, but that was done in our view only in extraordinary circumstances and issued in view of the mandate contained in Article 141 of the Constitution which cannot be treated as a precedent for this Court or the High Courts to follow. We, therefore, hold that a seat which fell vacant in a particular year cannot be carried forward or created in a succeeding year, in the absence of any rule or regulation to that effect.

17. We are, therefore of the view that the Division Bench of the High Court has rightly dismissed the claim made by the appellant. The appeal is, therefore, dismissed. There will be no order as to costs.”

In such circumstances, no relief can be granted to the petitioner, on account of his absence on the final day of counselling. The writ petition is accordingly dismissed.

OCTOBER 20, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No