

CWP No.21509 of 2015

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

**CWP No.21509 of 2015
Date of decision:25.05.2016**

Aashir Jindal

...Petitioner

Versus

Baba Farid University of Health Sciences, Faridkot & ors. ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. C.L.Sharma, Advocate,
for the petitioner.

Mr. Manish Dadwal, Advocate,
for respondent No.1.

Mr. Suresh Singla, Addl. A.G., Punjab.

Mr. G.S.Kaura, Advocate,
for respondent No.3.

Ms. Shivangi Sharma, Advocate,
for respondent No.4.

Rakesh Kumar Jain, J.

This petition is filed for seeking a writ in the nature of *mandamus*, directing the respondents to consider the case of the petitioner and grant him admission in the MBBS Course in a college under the Baba Farid University of Health Sciences, Faridkot (hereinafter referred to as the “University”).

The petitioner is the son of an Ex-army Officer, who died on 02.02.1998 in harness. He appeared in AIPMT exam for admission to the MBBS course under reserved Defence Personnel Category No.24-Died while in Service and Death Attributed to Military Service. He was granted

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admission in the Government Medical College, Kota on the basis of his All India Merit, where the petitioner had joined his course on 25.09.2015. It is alleged that the revised result of PMET-2015 was declared by the University on 01.09.2015 in which the petitioner is shown to have obtained 1826th rank in the reserved Category No.24(3). On 26.09.2015, the University allegedly notified on internet the schedule of 2nd extended round of physical counselling of PMET-2015. The petitioner appeared in the counselling at Guru Gobind Singh Medical College, Faridkot and allegedly disclosed about his admission in Government Medical College, Kota and submitted that in case the seat is allotted to him in Punjab, he will surrender his seat in Rajasthan. It is alleged that he was told by the Counselling Committee that he would be offered the seat if he would vacate his seat in Kota and submitted his original documents detained by the said college. It is further alleged that the petitioner surrendered the seat at Kota on 30.09.2015 and collected his original documents and produced the same before the Counselling Committee at Guru Gobind Singh Medical College, Faridkot but he was told that his candidature could not be considered and rejected since the certificate was not countersigned by the Zila Sainik Board but none of his pleas were accepted and then the petitioner made a representation to the Vice Chancellor of the University on 01.10.2015 but to no avail as he was told that no interference/intervention would be there in the admission process being done by the duly constituted Committee. At last, the present petition has been filed for the directions referred here-in-above.

During the pendency of the present petition, this Court passed

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the following orders on 04.11.2015, 18.11.2015 and 14.12.2015:-

Order dated 04.11.2015

“In the reply filed by the respondent-University, it is admitted that the petitioner had secured 508 marks in the PMET-2015, whereas, the last candidate, namely, Bhavjeet Singh Bajwa had got 431 marks in the defence category. It has been further averred that the Selection Committee did not consider the petitioner as he did not produce defence certificate countersigned by appropriate authority by 30.09.2015.

It is not disputed that the petitioner had already been given admission in the defence category with the Government Medical College, Kota on the strength of the same certificate (Annexure P-4), with which he was seeking admission here and is higher in merit.

Faced with this situation, counsel for the respondent-University prays for time to file appropriate affidavit as to how the petitioner can be adjusted on account of the alleged lapse of the Selection Committee, as the petitioner has been gravely prejudiced on account of losing his admission at the Institute in Kota and thus lost out on a precious coveted medical seat.

Needful be done before the next date of hearing.

List on 17.11.2015.

Copy of this order be given dasti under the signatures of Special Secretary of this Court.”

Order dated 18.11.2015

“Learned State counsel seeks time to file reply.

Petitioner has been denied admission in the MBBS Course against the reserved seat for dependents of defence personnel on the ground that he had not got the appropriate certificate duly countersigned. It is not disputed that the petitioner had taken admission under the defence category with the Government Medical College, Kota as a Government of India Nominee under the Defence Category AIPMT 2015-16 on 25.9.2015 (Annexure P3). On account of coming within the zone of consideration, on the strength of his marks in PMET-2015 held by the respondent-University, he resigned and surrendered his seat at Kota and the

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original documents were returned to him.

He appeared before the Counseling Committee on 29.9.2015 of the respondent-University, and was asked to produce his defence certificate countersigned by the appropriate authority on 30.9.2015. The case of the petitioner is that his certificate was duly signed by the Army Headquarters and the District Defence Service Welfare officer, Ludhiana. The Admission Committee had, however, insisted that the certificate be countersigned by the Rajya Sainik Board.

Reliance is placed upon the format (Annexure P5) of the prospectus wherein it is mentioned that the Army Headquarters or the Commanding Officer of the last armed unit or Secretary, Zila Sainik Board countersigned by the Secretary, Rajya Sainik Board in the case of ex-defence personnel would be the requirement. It is not disputed that Form (Annexure P4) has been signed by the Army Headquarters apart from the District Defence Services Welfare Officer. In spite of this, on the next day i.e. 30.9.2015, he was denied admission on a technicality though the certificate had been duly stamped from the competent authority. Resultantly, he has lost out his admission and seat in Kota.

The petitioner cannot be put to loss on account of the Admission Committee's lapse as a precious seat and a year is being lost by the petitioner who had approached this Court immediately on 5.10.2015.

In such circumstances, the respondent-University is directed to provisionally admit the petitioner in the MBBS course and allot him a college. The University will, thereafter, take necessary steps for creation of a supernumerary seat after taking sanction from the State and Medical Council of India. The university shall also ensure that the extra classes are arranged for the petitioner to make up the loss of the classes for petitioner and for his practical experience.

Adjourned to 14.12.2015, for filing affidavit as to what action has been taken.”

Order dated 14.12.2015

“On oral request of the counsel for the parties, Mr. Bhavjeet Singh Bajwa is impleaded as respondent no.3, who was allotted the seat in place of the petitioner.

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Mr. Gurjeet Singh Kaura, Advocate has filed power of attorney on behalf of respondent no.3-Mr. Bhavjeet.

Office to make necessary correction in the memo of parties.

Affidavit on behalf of respondent no.1-University has been filed in Court today. The same is taken on record.

Office to tag the same at appropriate place in the file.

Counsel for the University has pointed out that an impression was given before this Court on two occasions i.e. on 4.11.2015 and 18.11.2015 that the petitioner had lost his seat at Kota. It is submitted that when admission was given on 7.12.2015 in compliance of order dated 18.11.2015, the mother of the petitioner informed the authorities that he was not present because he was already studying at Kota. It is further submitted that the University has also granted provisional admission but respondent no.3 would be adversely affected in case necessary permission does not come from the MCI. It is submitted that on account of wrong projection the interim order was passed and therefore the same is liable to be vacated.

Faced with this situation, Mr. Sharma prays for some time to file a categorical affidavit as to the fact that whether on being denied admission by the selection committee on 30.9.2015 had he rejoined at Kota and whether he continued studying there till 4.11.2015 and onwards. The release certificate/surrendering of seat from the Medical College, Kota shall also be appended to show on which date he left the said college.

It will be open to the University and private respondent also to get necessary information from the Medical College, Kota to show that the petitioner was already continuing with his studies at Kota when the first order dated 4.11.2015 was passed.

Let the needful be done before the next date.

Adjourned to 23.12.2015.”

Pursuant to the aforesaid orders, the petitioner filed his affidavit dated 23.12.2015 in which he categorically averred that he got admission in Government Medical College, Kota on 25.09.2015, surrendered the seat there on 29.09.2015 and produced the original

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certificates/documents before the Counselling Committee of the University on 30.09.2015 but again joined the Government Medical College, Kota on 08.10.2015 and continued studying there upto 09.12.2015. It has been specifically mentioned that when his mother informed him about the order dated 18.11.2015 on 21/22.11.2015, he informed his mother that since he has already got admission in Government Medical College, Kota, therefore, he does not want to take any risk now. However, it is averred that he has again surrendered the seat at Government Medical College, Kota on 09.12.2015 and since then, under the orders of this Court, got admission at Government Medical College, Faridkot from 14.12.2015 onwards.

On the other hand, counsel for the Medical Council of India (MCI) has specifically stated that the MCI, vide its letter dated 08.03.2016, has informed that in view of the statutory provisions of the Medical Council of India Act, 1956 (hereinafter referred to as the “Act”) and various judgments of the Supreme Court especially in the case of **Satyabrata Sahoo vs. State of Orissa**, (2012) 8 SCC 203, a supernumerary post cannot be created by the MCI as there is no such provision either in the Act or in the MCI Regulations.

I have heard learned counsel for the parties and perused the available record.

As a matter of fact, the petitioner was allowed admission on 18.11.2015 by the Court when it felt that the petitioner had surrendered his seat on 29.09.2015 at Government Medical College, Kota, produced the original certificates before the Counselling Committee of the University at Guru Gobind Singh Medical College, Faridkot on 30.09.2015 but the

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admission was declined on a mere technicality that his certificate seeking reservation being a ward of an Ex-Army Officer was not duly countersigned from the Competent Authority and as a result thereof, the petitioner had lost his admission and seat in Government Medical College, Kota. In this background, the petitioner was allowed to take admission by creating a supernumerary seat after having been sanctioned from the State and the MCI. However, when the Court passed the order dated 18.11.2015, a wrong impression was given to the Court by the petitioner that he had lost his seat at Kota because at that time he was already studying at Government Medical College, Kota.

Counsel for the petitioner was directed to file a categorical affidavit to the effect as to whether after having been denied admission by the Selection Committee on 30.09.2015, the petitioner had rejoined at Government Medical College, Kota and continued to study there till 08.10.2015 onwards. The petitioner has filed his affidavit dated 23.12.2015 in which he has specifically admitted that after having been denied admission by the University on 30.09.2015, he again got admission in the Government Medical College at Kota on 08.10.2015 where he not only continued his study till 18.11.2015 rather till 09.12.2015 and took advantage of the order dated 18.11.2015 passed by this Court out of sympathy and got admission in Punjab.

As a matter of fact, the petitioner is guilty of *supressio veri suggestio falsi* as he kept on playing hide and seek with the Court inasmuch as did not give the true picture to the Court when the order dated 18.11.2015 was passed as at that time, it was projected by the counsel for the petitioner

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that the petitioner has lost the seat at Kota as well as in Punjab, whereas on 18.11.2015, the petitioner was very much studying in the Government Medical College, Kota. Had this impression not been given by the petitioner to the Court on 18.11.2015, the said order could not have been passed at all and the petitioner would have continued his studies at Government Medical College, Kota.

Such type of fraud cannot be allowed to be perpetuated at the hands of the petitioner who has fraudulently taken the Court for a ride and deliberately misled the Court in order to obtain a favourable order of taking admission in a Medical College in Punjab though he was already studying in the Government Medical College at Kota in Rajasthan. Such kind of action on the part of the petitioner has to be strongly deprecated. Even otherwise, the order dated 18.11.2015 was a conditional order while provisionally admitting the petitioner, depending upon creation of a supernumerary seat after the sanction from the State and the MCI, whereas the MCI has flatly refused to create a supernumerary seat on the ground that there is no such provision either in the Act or in the MCI Regulations.

Thus, in view of the aforesaid facts and circumstances, I do not find any merit in the present writ petition and hence, the same is hereby dismissed and the order dated 18.11.2015 is vacated. However, the petitioner, if so advised, may approach the Government Medical College, Kota to continue his course there, if permissible, in accordance with law.

May 25, 2016
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(Rakesh Kumar Jain)
Judge