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

+ W.P.(C) 1529/2016

PARUL KODAN

Through

..... Petitioner

Mr. S.K. Dubey with Mr. Udit Malik,  
Advocates

versus

UNION OF INDIA AND ANR ..... Respondents

Through

Dr. Rakesh Gosain, Advocate and  
Amicus Curiae.

Mr. Arun Bhardwaj, CGSC with  
Mr. Mimansak Bhardwaj, Mr. Sumit  
Sharma and Mr. Ashish Pandey,  
Advocates for UOI.

Mr. R.K. Gupta and Mr. M.K. Singh,  
Advocates with Dr. Sanjeev Lalwani,  
Registrar for AIIMS.

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Date of Decision : 5<sup>th</sup> April, 2016

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

## **J U D G M E N T**

**MANMOHAN, J: (Oral)**

1. Present writ petition has been filed seeking issuance of a writ of mandamus directing respondent no. 2-AIIMS to grant admission to petitioner, waitlist no. 2 against a vacant general category seat under DM (Infectious Disease) course for the January 2016 session.

2. The brief facts of the present case are that the respondent-AIIMS for the said course issued a prospectus for three general seats and one sponsored category seat. The petitioner having qualified the written test and departmental assessment was placed at waitlist no. 2. The waitlist no. 1 candidate was accommodated prior to 31<sup>st</sup> January, 2016 as one of the selected candidates did not take admission against the general category.

3. On 1<sup>st</sup> February, 2016, Dr. Kajal Prasad submitted her resignation from the said course stating inter alia *"I want to resign from this department due to some personal reason with effect from today."*

4. Dr. Kajal Prasad's letter of resignation was forwarded to the office of Dean, AIIMS on 5<sup>th</sup> February, 2016. The said letter of resignation was received in the office of Registrar, AIIMS on 9<sup>th</sup> February, 2016 and was accepted by the Dean on 11<sup>th</sup> February, 2016. The internal note that was put to the Dean is reproduced hereinbelow:-

Ref.FR( D.NO.2368 dated 10.02.2016)

Dr.Kajal Prasad, Senior Resident (DM Infectious disease) in the Department of Medicine has tendered her resignation w.e.f. 01.02.2016 due to personal reasons. The Prof. & Head has forwarded the same.

In this regard it is stated that she joined as Senior Resident (M.Ch) on 01.01.2016 and submitted her resignation on 01.2.2016 with the request that his resignation may be accepted from 01.02.2016.

Submitted for orders, whether her resignation may be accepted  
w.e.f 01.02.2016 (AN) with the condition to deposit one month salary in  
lieu of short notice period.

10/2/16

AO 'x' for approval please. 10.02.16

Registrar Saw 10/2/16

Sub-Dean [Signature] 10/2/16

Dean [Signature] 11/2/16

(emphasis supplied)

5. The Memorandum by which Dr. Kajal Prasad's resignation was accepted is also reproduced hereinbelow:-

*"Subject: Acceptance of resignation - Dr. Kajal Prasad, Resident (DM Infectious disease) in the Department of Medicine.*

*With reference to his/her letter dated 21.11.2015 on the subject cited above, Dr. Kajal Prasad, Senior Resident (DM infectious disease) in the Department of Medicine is hereby informed that the Dean has been pleased to accept his/her resignation w.e.f. 01.02.2016 (AN). He/She is required to submit one month salary in lieu of short notice period. A No Demand Certificate may be issued in his/her favour.*

*Dr. Kajal Prasad is also required to return his/her EHS/Identity card issue to him/her if any, to the concerned section under intimation to the undersigned."*

6. On 1<sup>st</sup> February, 2016, the petitioner herself submitted her representation stating inter alia that as Dr. Kajal Prasad has submitted her resignation from the said course, a seat has fallen vacant. Being the only candidate in the waitlist, the petitioner requested that the said seat be allotted to her.

7. As respondent-AIIMS failed to consider the representation dated 1<sup>st</sup> February, 2016, W.P.(C) 1077/2016 was filed by the petitioner on 5<sup>th</sup> February, 2016.

8. On 8<sup>th</sup> February, 2016, this Court directed the respondent-AIIMS to decide the petitioner's representation on or before 12<sup>th</sup> January, 2016. On 12<sup>th</sup> February, 2016, respondent-AIIMS disposed of petitioner's representation stating *"As Dr. Kajal Prasad had tendered her resignation only on 01.02.2016 and requested to relieve her on 01.02.2016, the last date for completing admission process was 31<sup>st</sup> January, 2016. Accordingly, I am constraint, to inform that your request to allow you to join DM course on 1<sup>st</sup> February, 2016 cannot be acceded to. Your representation is accordingly disposed of."* The present writ petition challenges the aforesaid order.

9. Mr. S.K. Dubey, learned counsel for the petitioner states that no last date of admission was prescribed in the brochure. Consequently, according to him the date of 31<sup>st</sup> January, 2016 'harped upon' by the respondent no. 2-AIIMS in the order has no relevance.

10. Without prejudice to the above, Mr. Dubey states that even if the last date of admission is taken as 31<sup>st</sup> January, 2016, it was a Sunday. He states that office of respondent-AIIMS was closed on Sunday and on the very next day when the petitioner came to know about the resignation of Dr. Kajal Prasad, she immediately submitted her representation dated 1<sup>st</sup> February, 2016. Thus, according to him, the petitioner cannot be denied admission on any ground much less the last date concept.

11. Mr. Dubey also relies upon Section 10 of General Clauses Act, which reads as under:-

*"10. Computation of time - (1) Where, by any [Central Act ] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceedings shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:*

*Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877), applies.*

*(2) This section applies also to all [Central Acts] and Regulations made on or after the fourteenth day of January, 1887."*

12. Mr. Dubey also refers to and relies upon the judgment of the Supreme Court in ***H.H. Raja Harinder Singh Vs. S. Karnail Singh and Others, AIR 1957 SC 271*** wherein it has been held as under:-

*"5. This argument proceeds on an interpretation of Section 10 of the General Clauses Act which, in our opinion, is erroneous. Broadly stated, the object of the section is, to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance*

*of an act in a court or office, and that period expires on a holiday, then according to the section the Act should be considered to have been done within that period, if it is done on the next day on which the court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday. Now, it cannot be denied that the period of fourteen days provided in Rule 119(a) for presentation of an election petition is a period prescribed, and that is its true character, whether the words used are “within fourteen days” or “not later than fourteen days”. That the distinction sought to be made by the appellant between these two expressions is without substance will be clear beyond all doubt, when regard is had to Section 81 of the Act. Section 81(1) enacts that the election petition may be presented “within such time as may be prescribed”, and it is under this Section that Rule 119 has been framed. It is obvious that the rulemaking authority could not have intended to go further than what the section itself had enacted, and if the language of the Rule is construed in conjunction with and under the coverage of the section under which it is framed, the words “not later than fourteen days” must be held to mean the same thing as “within a period of fourteen days”. Reference in this connection should be made to the heading of Rule 119 which is, “Time within which an election petition shall be presented”. We entertain no doubt that the legislature has used both the expressions as meaning the same thing, and there are accordingly no grounds for holding that Section 10 is not applicable to petitions falling within Rule 119.*

*6. We are also unable to read in the proviso to Section 37 of the Act an intention generally to exclude the operation of Section 10 of the General Clauses Act in the construction of the Rules, as that will be against the plain language of Rule 2(6). It should be noted that the proviso applies only to Section 30(c) of the Act, and it is possible that the legislature might have considered it doubtful whether Section 30(c) would, having regard to its terms, fall within Section 10 of the General Clauses Act and enacted the proviso abundant ex abundanti cautela. The operation of such a beneficent enactment as Section 10 of the General Clauses Act is not, in our opinion, to be cut down on such unsubstantial grounds as have been urged before us. We are accordingly of opinion that*

*the petition which the respondent filed on May 18, 1954 is entitled to the protection afforded by that section and is in time."*

13. Mr. Dubey lastly submits that rule of the last date is a mere technicality and it should give way to the rule of merit. In support of his submission, he relies upon Supreme Court's judgment in ***Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others, (2012) 7 SCC 389*** wherein it has been held as under:-

*" 29. However, the question that immediately follows is whether any mid-term admission can be granted after 30th September of the academic year concerned, that being the last date for admissions. The respondents before us have argued with some vehemence that it will amount to a mid-term admission which is impermissible, will result in indiscipline and will cause prejudice to other candidates. Reliance has been placed upon the judgments of this Court in Medical Council of India v. Madhu Singh [(2002) 7 SCC 258] , Neelu Arora v. Union of India [(2003) 3 SCC 366] , Aman Deep Jaswal v. State of Punjab [(2006) 9 SCC 597 : 2006 SCC (L&S) 1893] , Medical Council of India v. Naina Verma [(2005) 12 SCC 626] and Mridul Dhar v. Union of India [(2005) 2 SCC 65] .*

*30. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer.*

*31. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to meritorious students. The rule of merit stands completely defeated in the facts*

*of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission.*

*32. Though there can be the rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. (Refer *Arti Sapru v. State of J&K* [(1981) 2 SCC 484 : 1981 SCC (L&S) 398] , *Chhavi Mehrotra v. DG, Health Services* [(1994) 2 SCC 370] and *Arvind Kumar Kankane v. State of U.P.* [(2001) 8 SCC 355])"*

14. On the other hand, Mr. R.K. Gupta, learned counsel for respondent-AIIMS states that resignation dated 1<sup>st</sup> February, 2016 of Dr. Kajal Prasad was received in the office of Dean on 5<sup>th</sup> February, 2016 and accepted on 11<sup>th</sup> February, 2016. He states that since the last date for admission in DM (Infectious Disease) course was on 31<sup>st</sup> January, 2016, petitioner is not entitled to admission in the said course.

15. Mr. Gupta submits that the Supreme Court in cases of *State of Maharashtra Vs. Vikas Sahebrao Roundale and Others*, (1992) 4 SCC 435 and *State of Punjab and Others Vs. Renuka Singla and Others*, (1994) 1

**SCC 175** has held that no Court should compel an authority to violate the rules.

16. Mr. Gupta also submits that the Supreme Court in ***Babu Varghese and Others Vs. Bar Council of Kerala and Others, (1999) 3 SCC 422*** has held that *"it is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor Vs. Taylor which was followed by Lord Roche in Nazir Ahmad Vs. King Emperor who stated "Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."*

17. Mr. Gupta lastly states that the seat against which the petitioner now seeks admission has been included in the advertisement for July 2016 session, for which an entrance test has been held on 2<sup>nd</sup> April, 2016. Consequently, according to him, petitioner is not entitled to any relief in the present proceedings.

18. Dr. Rakesh Gosain, learned Amicus Curiae states that though the prospectus issued by respondent-AIIMS is not a statutory document, yet it is binding on all the stakeholders.

19. Dr. Gosain also contends that as the cumulative capital expenditure and operative expenditure for each super specialty seat costs more than Rs. 30 to 35 lacs to the Public Exchequer, the said seat should not be permitted to go waste.

20. Dr. Gosain submits that carry forward of seats is not permissible in law. In support of his submission, he relies upon judgment of Supreme

Court in ***Faiza Choudhary Vs. State of Jammu and Kashmir and Another, (2012) 10 SCC 149*** wherein it has been held as under:-

*"14. A medical seat has life only in the year it falls, that too only till the cut-off date fixed [(2005) 2 SCC 65] 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 10-A/recognition under Section 11(2) has been granted. This Court in State of Punjab v. Renuka Singla [(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) 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 [(2002) 7 SCC 258] , 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 Satyabrata Sahoo v.State of Orissa [(2012) 8 SCC 203 : (2012) 2 SCC (L&S) 570] has reiterated that it would not be possible to increase seats at the expense of candidates waiting for admission in the succeeding years.*

21. Hence, according to learned Amicus Curiae, carry forward of seat from January 2016 Session to July 2016 Session is not permissible in law,

more particularly when rights have accrued in favour of the waitlisted candidate like the petitioner.

22. Learned Amicus Curiae also emphasises that respondent-AIIMS has not stipulated either the mode and manner of submission of resignation or the application form to be filled by the waitlisted candidates.

23. Having heard learned counsel for the parties, this Court finds that the prospectus (January 2016 Session) issued by respondent-AIIMS does not stipulate the last date of admission in the DM (Infectious Disease) course as 31<sup>st</sup> January, 2016. Accordingly, the last date of joining, i.e., 31<sup>st</sup> January, 2016 has no relevance.

24. Consequently, the only reason given in the impugned order dated 12<sup>th</sup> February, 2016 issued by respondent-AIIMS for rejecting the petitioner's application that the last date of admission in the course is 31<sup>st</sup> January, 2016, is incorrect.

25. This Court is also in agreement with the submission of Mr. Dubey that as 31<sup>st</sup> January, 2016 was a Sunday, Section 10 of General Clauses Act is attracted to the present case.

26. This Court upon a perusal of the file is of the view that respondent-AIIMS had constructive notice of resignation of Dr. Kajal Prasad on 1<sup>st</sup> February, 2016, inasmuch as she had joined as Senior Resident M.Ch. in AIIMS itself on 1<sup>st</sup> February, 2016.

27. This Court is of the opinion that by virtue of doctrine of relating back, the effective date of resignation of Dr. Kajal Prasad has to be 1<sup>st</sup> February, 2016.

28. Moreover, the delay in accepting the resignation of Dr. Kajal Prasad by respondent-AIIMS cannot be attributed to the petitioner. From the record, it is apparent that petitioner has been vigilant and had applied on the very same date, that means, 1<sup>st</sup> February, 2016 when the vacancy arose.

29. As there is no last date of admission and the course is for three years, the delay, if any, in joining by the petitioner can be construed as reasonable and can be condoned. The approach of this Court is in conformity with the Division Bench's judgment in ***Manoj Kumar Dhaka Vs. Union of India & Ors., LPA No 763/2012*** decided on 26<sup>th</sup> November, 2012 wherein a delay of three months in joining a DM course was condoned.

30. In fact, this Court following the Division Bench's judgment in ***Manoj Kumar Dhaka*** (supra) in the case of ***Rajnish Kumar Vs. Guru Gobind Singh Indraprastha University & Ors., 2014 SCC OnLine Del 6468*** has held as under:-

*"2. In the writ petition it is averred that on 30th September, 2014 one of the candidates who took admission in the course of M.Ch. (Paediatrics Surgery) at PGIMER, Dr. R.M.L. Hospital resigned and vacated the seat. It is also stated that though the petitioner who was first position in wait list came to know about the said vacant seat on 30th September, 2014 itself, yet as he was in Jammu on emergency duty with the Department of Neurosurgery,*

*GMC/SSH Hospital, Jammu at that point of time, it was impossible for him to come over to Delhi and take admission on 30th September, 2014. Copy of the certificate dated 25th October, 2014 issued by the Head of Department, Department of Neurosurgery, GMC/SSH, Jammu is reproduced hereinbelow:-*

**TO WHOM IT MAY CONCERN**

*Certified that Dr. Rajnish Kumar S/o Sh. Pritam Lal, Senior Resident, Department of Surgery, GMC, Jammu was on Emergency duty for 24 hours on 30th of September 2014 in the Department of Neuro Surgery.*

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*8. This Court also finds it perplexing that though a vacancy had occurred before the cut off date had expired, the college and the University had not taken any steps to fill the same. Agreed that the vacancy arose at the last minute, but this Court is of the view that the respondent owed a duty to have put in place a mechanism to ensure that such a valuable seat does not go waste. Consequently, in the opinion of this Court, there has been a lapse on the part of the respondents in filling up a vacancy in a super specialty course.*

*9. This Court is also of the view that a valuable seat in a super speciality course cannot be allowed to go waste for the next three years merely for the reason that about two months have elapsed after the cut off date. In fact the Division Bench of this Court in Manoj Kumar Dhaka v. Union of India, LPA No. 763/2012, in similar circumstances, has after considering the entire law on the subject held as under:-*

*“16. The present is an equally hard case. The Super Specialty Course of DM (Cardiology) in PGIMER is not only prestigious but highly competitive. To secure admission therein is no mean task. The need of the country and the public at large for the doctors with said Super Specialty cannot be over emphasized. The course, we are informed is of three years duration out of which three months are admittedly over.*

*17. What falls for consideration is as to whether the aforesaid can fall in the category of rarest of rare cases as spelled out by the Supreme Court.*

18. The appellant, for the delay, cannot be faulted with in any manner whatsoever. Though the Learned Single Judge has observed that the appellant made out a wrong case than what emerged before the Court but the appellant could not be expected to have knowledge thereof. Though on the basis of the infrastructure available in the Department of Cardiology in PGIMER, four seats ought to have been allocated by GGSIPU, but GGSIPU on a wrong interpretation of Regulation 12(4) supra which was supported by MCI also before this Bench till 23rd November, 2012, allocated only three seats. We are unable to digest that such valuable seat should be allowed to go waste for the next three years merely for the reason of three months having elapsed.

19. These Super Specialty Courses are not classroom courses, though 80% attendance is informed to have been prescribed. The loss of three months in gaining hands-on practical-experience, we are sure, can always be compensated by extra hours put in by the candidate. It cannot be lost sight of that the appellant approached this Court without any delay and the writ petition was drafted on 5th July, 2012 itself and filed immediately thereafter, i.e. well before the last date prescribed for admission. Unfortunately the correct facts came to be revealed only through recording of the statement of the Registrar of PGIMER by the Learned Single Judge. Had the view, as we have taken, been taken immediately, the appellant would have been admitted well within the prescribed time.

20. We are further of the opinion that the decision of the GGSIPU to reject the request of PGIMER for the four seats in terms of amended Regulation 12(4) was wrong. Though PGIMER did not pursue the case but it cannot be lost sight of that it is a Government Institute with none being personally interested and it is ultimately the students who are the beneficiary of the courses which are being imparted and in our view they would have a cause of action against the wrongful denial/reduction of seats.

21. We are thus of the opinion that the facts of the present case justify admission at this stage.”  
(emphasis supplied)

*10. Consequently, the present writ petition is allowed and the petitioner is directed to be granted admission in M.Ch. (Paediatrics Surgery), PGIMER, Dr. R.M.L. Hospital for the session 2014-2017. If any procedural formalities are required to be fulfilled the same shall be complied with within a period of two weeks from today.*  
*Order dasti."*

31. Respondent-AIIMS has also not been able to show or produce any rule that is likely to be violated if relief is granted to the petitioner. Therefore, the judgments in *State of Maharashtra Vs. Vikas Sahebrao Roundale and Others*, (supra) and *State of Punjab and Others Vs. Renuka Singla and Others* (supra) offer no assistance to respondent-AIIMS.

32. Consequently, present writ petition is allowed and the respondent-AIIMS is directed to grant admission to the petitioner, waitlist no. 2 candidate against the General Category seat in DM (Infectious Disease) course for January 2016 Session.

33. Before parting with the case, this Court places on record its appreciation for the services rendered by learned Amicus Curiae.

Order dasti.

**MANMOHAN, J**

**APRIL 05, 2016**

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