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

+ W.P.(C) 4249/2016 & C.M.No.17939-17940/2016

EX MAJOR ROHIT SHIVHARE

..... Petitioner

Through Mr.Anil Bakshi, Advocate.

versus

MEDICAL COUNCIL OF INDIA & ORS

..... Respondents

Through Mr.T.Singhdev with Ms.Puja Sarkar
and Ms.Biakthan Sangi, Advocates
for R-1/MCI.

Mr.Kirtiman Singh, CGSC with
Mr.Jitendra Kumar Tripathi,
Advocates for R- 2, 3 & 4.

Mr.Amit Bansal with Mr.Akhil
Kulshrestha, Advocates for R-5.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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12.05.2016

Present writ petition has been filed seeking a direction to the respondents to allot a recognized seat in PG course in institutions under the Armed Forces Medical Services to the petitioner. In the alternative, the petitioner prays for a direction to the respondents to conduct fresh counselling for the year 2016.

The petitioner had appeared for the entrance exam held under the aegis of the Armed Forces Medical Services and was placed 12th in the merit list for Priority IV (Ex-Army Doctors) candidates. The petitioner was offered admission vide letter dated 13th April, 2016 to General Medicine Army Officer, R&R, Delhi Cantt.

The petitioner's grievance is that the admission offered to him

is against a permitted seat and not a recognized seat. Learned counsel for the petitioner states that the petitioner filled his option based on availability of recognized seats and took admission under the impression that a recognized seat is being offered to him.

Learned counsel for the petitioner states that no permitted seat could have been offered by the respondents to anyone in view of the judgment of the Supreme Court in *Nikhil Himthani Vs. State of Uttarakhand & Ors. (2013) 10 SCC 237*. He further states that he was forced to give an undertaking accepting admission against a permitted seat.

However, a perusal of the paper book reveals that when Priority IV candidates like the petitioner came to be considered, only permitted seats in (General Medicine) were available.

In fact, on 18th April, 2016, the Admission Cell of the Army Hospital (R&R) clearly showed the petitioner's admission against a permitted seat. (page 16)

On 19th April, 2016, the petitioner was issued an offer letter wherein it was clearly stated that the petitioner's admission was against a seat '*recommended for increase intake*'.

On 19th April, 2016 itself, the petitioner even gave an undertaking admitting that the seat allotted to him was against a recommendation for increase in intake and the decision for recognition of the said seat was pending with MCI. The said undertaking dated 19th April, 2016 is reproduced hereinbelow:-

“UNDERTAKING

1. I, Dr.Rohit Shivhare, S/o. Col. G.R. Shivhare, clearly understand that the seat allotted to me in the subject of Gen. Medicine (at Army Hospital R&R) is against:

Recommended for increase intake, seat as displayed by MCI at their website.

2. I also understand that the decision for recognition of this seat is pending with MCI.

3. I am accepting this seat at my own risk and will not hold the institute i.e. Army Hospital responsible in case of advance decision by MCI.”

(emphasis supplied)

This Court is of the opinion that in view of the aforesaid categorical undertaking, the present writ petition is not maintainable. After all, the petitioner cannot be allowed to wriggle out his of own admission.

However, if the petitioner wishes to withdraw his undertaking, he can seek a declaration from the Civil Court that the undertaking given by him was either under a mistake or vitiated by fraud and/or coercion. But till such a declaration is obtained, the petitioner is not entitled to any relief in writ proceedings.

Accordingly, the present writ petition and the applications are dismissed.

Order *dasti*.

MANMOHAN, J

MAY 12, 2016
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