

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3651 of 2018

Dr. Ashutosh Singh, Son of Sri Abhimanu Singh, at present Medial College and Hospital (P.M.C.H.), P.S.- Pirbahore, District- Patna, being a student of M.S. (ENT), Session- 2016-2019, Permanent resident of House No.50 C/2B, Govindpur, Allahabad (U.P.)

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health and Family Welfare, Department of Health, Govt. of Bihar, Vikas Bhawan, New Secretariat, Patna.
2. The Principal Secretary, Health and Family Welfare, Department of Health, Govt. of Bihar, Vikas Bhawan, New Secretariat, Patna.
3. The Examination Controller, Swasthya Sevayen, Bihar, Patna.
4. The Patna Medical College and Hospital, Patna through the Principal.
5. The Principal, Patna Medical College and Hospital (P.M.C.H.), Patna.
6. The Head of the Department (HOD), ENT Department, Patna Medical College and Hospital, Patna.
7. The Union of India, through the Secretary, Health and Family Welfare Ministry, New Delhi.
8. The Secretary, Health and Damily Welfare Ministry, Union of India, New Delhi.
9. The Assistant Director (Medical Education), Health and Welfare Ministry, Union of India, New Delhi.
10. The Medical Council of India, through its Chairman, New Delhi.
11. The Chairman, Medical Council of India (MCI), New Delhi.
12. The Deputy Secretary (P.G.), Medical Council of India, New Delhi.
13. Aryabhatta University of Bihar, through its Vice-Chancellor, Patna.
14. The Vice Chancellor, Aryabhatta University of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Deepak Kumar Sinha
For the Respondent/s	:	Mr. Binod Kr. Yadav, SC-18
For the Union of India	:	Mr. Uma Shankar Verma
For the MCI	:	Mr. Kumar Brijnandan

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 03-07-2018

Heard learned counsel for the parties.

2. The petitioner was admitted in M.S. (ENT) course for the session 2016-2019 in Patna Medical College and Hospital, Patna (hereinafter referred to as the 'P.M.C.H.').

3. This is not in dispute, which the petitioner himself



admits that he remained absent for more than four months from 15.08.2016 to 28.12.2016. It is his explanation, however, that he was prevented from discharging his duties and attending eye disease namely 'Anterior Ureitis', for which he was being treated by an eminent doctor, it is the petitioner's case that when he was declared fit and started attending his classes and duties, he was not allowed to mark his attendance despite his repeated requests. This fact is being disputed in the counter affidavit, which I will discuss later. It is further case of the petitioner that on one pretext or the other, the college authorities did not allow him to resume his classes and duties that compelled the petitioner to file an application under the Right to Information Act, on 05.07.2017, seeking information as to why he was not being paid his stipend.

4. This is also not in dispute that on 07.07.2017, a show-cause notice was issued to the petitioner by the Principal of the college, seeking his explanation for his absence. The show-cause notice has been brought on record by way of Annexure-6 to the counter affidavit, which indicates the period of petitioner's absence as 15.08.2016 to 06.06.2017. The show-cause notice indicated proposed action of cancellation of admission and initiation of disciplinary action. The petitioner



submitted his reply, taking a plea that he had joined on 28.12.2016 itself and he was waiting for permission, as instructed by the Head of Department (ENT), to resume his classes and duties. Two fact finding inquiry Committees were constituted. The letter dated 19.07.2017, issued by Principal, P.M.C.H. has been brought on record, which was addressed to the petitioner. The petitioner was asked to submit his medical certificate and an affidavit that he would not be claiming stipend for the period of his absence. The letter further indicated that the petitioner would be required to compensate his absence by undergoing additional training, so that he could complete his course within the specified period of three years. It appears from the letter itself that the Principal of the P.M.C.H. had acted upon the report of the committees so constituted, whereas it is the petitioner's case that though he attempted to resume his training and duties in terms of the decision of the Principal, he was not allowed as the Head of Department refused to accept his joining. It is the case of the respondent that the petitioner in fact did not submit his medical certificate nor joining. A communication dated 23.08.2017 has also been brought on record, issued by the Principal P.M.C.H., which dealt with the petitioner's grievance that he was not being allowed to resume



his duties. The petitioner was directed to report to the Principal himself on 24.08.2017 for resolution of the controversy. There is allegation against the petitioner of using filthy language as is evident from other documents which are there on record.

5. Finally, vide Memo No. 5919 dated 09.11.2017, issued by the Principal of P.M.C.H., addressed to the petitioner, his admission has been cancelled on various ground which is being assailed in the present writ application.

6. A counter affidavit has been filed on behalf of the Principal, P.M.C.H.. The claim of the petitioner that he had submitted his medical certificate and affidavit on 04.08.2017 has been denied and it has been stated that on 16.08.2017, an application was submitted by the petitioner without any medical certificate. It has been stated that despite the facts that the Principal allowed him to join after submission of his medical certificate, he failed to join. Reference has also been made to letter dated 03.10.2017 when the petitioner was again asked to join.

7. Mr. Deepak Kumar Sinha, learned counsel appearing on behalf of the petitioner, assailing the impugned order, has submitted that the petitioner has been victimized for reasons unknown. Despite the fact that the petitioner was



genuinely suffering from eye ailment and for that reason he had remained absent for nearly four months, his request to allow him to resume his classes and duties was unreasonably declined.

8. Learned counsel, appearing on behalf of the Principal, P.M.C.H., on the other hand, while relying on the statements made in the counter affidavit, has drawn my attention to the prospectus of Post Graduate Medical Admission Test, 2016, Clause 6.8 of which deals with the training. Sub-Clause (v) of Clause 6.8 provides that an admitted candidate who remains absent continuously for more than two months will be liable to forfeit his candidature. Referring to the said provision, it is the stand of the respondent Principal that there is no infirmity in the decision cancelling petitioner's admission.

9. Mr. Brijnandan, learned counsel appearing on behalf of the Medical Council of India, has drawn my attention to Clause 13.3 of the Medical Council of India Post Graduate Medical Education Regulations, 2000 to submit that the matter of grant of leave to Post Graduate student is to be regulated as per the respective State Government Rules, and accordingly, provision has been made, which contemplates forfeiture of the candidates, if he remained absent for a period of two months.

10. Since, there is no dispute about the fact that the



petitioner had remained absent for a period of more than two months, the decision of the Principal, P.M.C.H. cannot be faulted with, particularly, in the background of the facts which I have discussed on the basis of pleadings on record. This Court exercising jurisdiction under Article 226 of the Constitution of India, will not interfere with such decision of the Principal, P.M.C.H. taken in the light of the provision in the prospectus itself.

11. However, I am of the view, that one cannot be unmindful of the *keen* and *tough* competition which candidates are required to undergo for admission to P.G. Medical courses in this country, that too in Government Medical Colleges.

12. It is difficult from the pleadings on record to decipher as to what actually compelled the petitioner to remain absent. The Court expresses satisfaction over the responses of the Principal of the college in asking him to join the classes and duties which was apparently a sympathetic approach keeping in mind the career of a young doctor. The Court is of the view that the Principal of the college may give the petitioner another chance to resume his course. The Court is purposefully not issuing any direction to the Principal to consider the petitioner's case, rather it is leaving upon the Principal to re-consider the



petitioner's case in peculiar facts and circumstances. If need be, the petitioner may be counselled by the Principal himself and other senior faculty members of the college. If despite efforts taken by the Principal this time, in view of the observations made by this Court, the petitioner is found to be lacking in his conduct, he will be certainly losing his candidature.

13. The Court expects that the Principal shall take a decision in this regard within 15 days from the date of receipt/production of a copy of this order. The Principal will consider the petitioner's case only if the petitioner himself approaches the Principal with a copy of the present order.

14. In the event the petitioner is taken back, appropriate conditions will have to be imposed, so that he completes his course strictly in accordance with the Regulations governing course, more particularly, the attendance part.

15. This application stands disposed of with the observations as above.

(Chakradhari Sharan Singh, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	13.07.2018
Transmission Date	

