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

+ W.P.(C) 3959/2020 & CM No.14211/2020

RAYAPPA HANDK SRI THEJ Petitioner
Through Mr.K.L.Sastry and Ms.K.Sri
Varshini, Advs.

versus

UNION OF INDIA AND ORS. Respondent
Through Dr.B.D.Athani, Chairman, MCC
DGHS /R-3
Mr.V.S.R. Krishna, Adv for AIIMS/R-4

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **06.07.2020**

This hearing is conducted through Video Conferencing.

1. This Writ Petition is filed by the petitioner to set aside the impugned order of communication dated 2.7.2020 whereby the respondent No.2 has rejected the petitioner's request to resign from the seat of MS Gen. Surgery at Vardhman Mahavir Medical College & Safdarjung Hospital. Direction is also sought to respondent No.4 to consider the seat allotment to the petitioner in AIIMS in MS Surgery under OBC Category.
2. The case of the petitioner is that he was allotted the aforesaid seat of MS Gen. Surgery in Vardhman Mahavir Medical College & Safdarjung Hospital in the first round of counselling under All India Quota on the basis of his performance in NEET-PG-2020. Further, based on his performance, the petitioner has also now cleared the Entrance Examination conducted by AIIMS and has secured an All India Rank of 26 in the OBC Category and, therefore, would be eligible to be allotted a seat in the subject of MS Surgery

in AIIMS. It is in this background that the petitioner had approached respondent No.1 with a request to permit his resignation from the seat allotted to him in the Vardhman Mahavir Medical College & Safdarjung Hospital so that he can participate in the counselling to be held in AIIMS on 7.7.2020. The respondent No.2 college has, however, rejected the resignation of the petitioner.

3. Learned counsel for the petitioner submits that the rejection of the resignation of the petitioner is entirely misplaced. He submits that at the time of admission the petitioner had signed a bond for the sum of Rs.3 lacs which was payable in case he fails to complete the course. He submits that the petitioner is ready to deposit the sum of Rs.3 lacs and he should be given back his original medical certificates so that he can attend the counselling for AIIMS to be held tomorrow i.e. 7.7.2020.

4. I have heard learned counsel for the petitioner, learned counsel for respondent No.4 and Dr.B.D.Athani, Special Director General, Health Services.

5. Heavy reliance was placed by learned counsel for the petitioner on a judgment passed by a co-ordinate Bench of this court in the case of ***Dr.Sneha Prakash vs. Union of India*** being W.P.(C)5397/2018 dated 18.5.2018. The facts of that case are virtually identical to the present case. In that case the petitioner had resigned from the seat in MS Ophthalmology, Lady Harding College which was allotted to her in the first round of counselling under the All India Quota on the basis of her performance in NEET-PG. The Petitioner therein also got selected for the AIIMS Quota and therefore had approached with a request to permit her to resign from the seat allotted to her at Lady Harding College. In those facts this court had passed

following directions:-

“In these circumstances, it is agreed between the parties that, subject to the petitioner depositing a sum of Rs.10 lakhs with respondent no.2 on 19.05.2018, her resignation from the seat in Lady Harding College would stand accepted and her original documents would be immediately returned to her by respondent no.2, so to enable her to take part in the counselling to be conducted by AIIMS.

Needless to say that the aforesaid statement has been made by respondent no.1 in the peculiar facts of the case and will not act as a precedent.”

6. In this case a perusal of the impugned communication dated 2.7.2020 which has been sent by Vardhman Mahavir Medical College & Safdarjung Hospital shows that the respondent has simply rejected the resignation of the petitioner stating that the matter has to be taken up directly with ADG (ME)/Addl.DG of DGHS (MCC). Further, a perusal of the surety bond signed by the petitioner shows that in case the petitioner leaves the course before its completion he will pay the surety amount of Rs.3 lacs and till then the University shall have a right to retain original certificates.

7. Clearly, the petitioner cannot be forced to continue the course in the college in question and can leave after having paid the necessary sum of Rs.3 lacs, which the petitioner is willing to do.

8. Dr.Athani, appearing for respondent No.3, also very fairly states that the judgment of the co-ordinate Bench of this court is factually somewhat identical to the facts of the present case.

9. Accordingly, it is agreed that the petitioner shall forthwith deposit with respondent No.2 a sum of Rs.3 lacs. On deposit of the said amount the resignation of the petitioner shall be accepted and the petitioner shall be returned the original documents forthwith. Respondent No.4 shall thereafter

permit the petitioner to participate in the counselling, as per law, and as per his rank in the list. The vacancy in Respondent No.2 College may be filled up in the mop up counselling.

10. Parties agree that this order shall not be a precedent for any other matter in as much as this order is being passed in the peculiar facts and circumstances of this case. It is also agreed that this matter may be disposed of accordingly.

11. Petition stands disposed of accordingly. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

JULY 06, 2020

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