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

% *Date of Decision: 9th July, 2020*

+ LPA 171/2020 & C.M.No.14556/2020 (*interim relief*)

DR. NAVROZ MEHTA

..... Appellant

Through: Mr.Rakesh Kumar, Adv. with
Mr.Gagandeep Mehta, Adv.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr.Virender Singh Charak, Adv. with
Ms.Shubhra Parashara, Adv. along with
Lt.Col.Chetna Pandey.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

: **D. N. PATEL, Chief Justice (Oral)**

Proceedings of the matter have been conducted through video conferencing.

CM APPL. No. 14557/2020, 14559/2020 & 14560/2020(exemptions)

Exemptions allowed subject to all just exceptions.

The applications are disposed of.

CM APPL. No. 14558/2020 (for leave to file the appeal)

The applicant is granted leave to file the appeal.

The application is disposed of

LPA No.171/2020

1. This appeal has been preferred by the appellant (Original petitioner) challenging an interim order dated 7th July, 2020 passed by the learned Single Judge in W.P.(C) No.3944/2020.

2. The learned Single Judge, in view of the Rules of Admission prescribed by Respondent No.2 – Director General, Armed Forces Medical Services, especially Rule 20(f) thereof, declined to grant interim relief. The learned Single Judge was of the view that the admissions brochure clearly states that a candidate who is already pursuing any PG Course shall not be eligible for admission to PG Course, in Medical Colleges run by Respondent No. 2(DG AFMS).

3. Having heard the learned counsel for the parties and looking to the facts and circumstances of the case and the impugned order dated 7th July, 2020, which was shown to us on screen (it was not annexed with LPA) by the counsel for the appellant (Original petitioner), and also looking to the Information Bulletin – Post Graduate Courses in AFMS Institutions through NEET-PG-2020 (hereinafter referred to as ‘**the Information Bulletin**’), we see no reason to entertain this LPA for the following reasons.

- (i) The appellant has secured All India rank in NEET PG Examination, 2020 as 13122 and secured 678 marks out of 1200. **The appellant has already applied and got admission on the basis of All India Ranking for PG Courses at Gauhati Medical College, Guwahati.**
- (ii) After securing admission in PG Medical Course in Gauhati Medical College on 26th June, 2020, now the appellant is in search of admission in PG Medical Course in Armed Forces Medical Colleges, managed by Respondent no. 2 (DG AFMS).
- (iii) We have perused the Information Bulletin at Annexure P-8 to this appeal. **Rules 20(f) and 21(f)** of the Admission Rules read as under:-

“20. The following eligibility criteria shall be applicable:-

(a) to (e) xxx xxx xxx

(f) A candidate who is already pursuing any PG course shall not be eligible for admission to PG course.

21. The following methodology will be adopted by candidates:-

(a) to (e) xxx xxx xxx

(f) List of certificates to be submitted in original by selected candidate at the college on the day of admission:-

(i) 06 (Six) Passport size photographs

(ii) Copy of the NEET-PG 2020 Admit card and printed copy of the DGHS website registration slip.

(iii) NEET-PG 2020 rank card allotted by NBE.

(iv) Class X / SSLC / ICSE certificate as valid certificate of proof of age.

(v) Nationality Certificate/ Xerox copy of valid passport and Domicile Certificate (where applicable)/ Birth Certificate endorsed with nationality as Indian on it.

(vi) First to Final year MBBS Mark Sheets of respective university.

(vii) MBBS Pass Certificate / Degree Certificate.

(viii) Internship Completion Certificate.

(ix) Permanent / Provisional State Medical Council registration certificate.

(x) Attempt Certificate.

(xi) Transfer Certificate / Migration certificate

(xii) Educational Gap affidavit, if any

(xiii) Allotment letter which will be provided at the time of AFMS PG counseling

XXX

XXX

XXX

(xvi) Declaration by the candidate is placed at Appx 'B'. Applicants without the above documents will be summarily rejected.

Admission of any candidate found to be willfully giving wrong information will be summarily rejected during any stage of the admission process by the Commandant of the institution where a seat has been allotted finally. The decision of the Commandant will be final.”

(emphasis supplied)

In view of the aforesaid Information Bulletin which was published much in advance, in the month of March, 2020, it appears that once the appellant has secured his admission in Gauhati Medical College in PG Medical Course, he is not entitled to get admission in Armed Forces Medical Colleges, managed by respondent no. 2(DG AFMS).

(iv) It has been held by the Supreme Court in **Mabel v. State of Haryana and Others** reported in **(2002) 6 SCC 318** in paragraphs 3, 4 and 5 as under:

“3. It is submitted by Mr K.V. Viswanathan, the learned counsel for the petitioner that clause 18 of the Information Brochure cannot be so interpreted as to debar her from seeking admission to the course for all times to come and if the order is not reviewed she would be precluded from seeking admission in MBBS course forever, which is an unintended punishment. Mr Sanghi would contend that clause 18 bars a

student who has taken admission in one course, to seek admission in another course.

4. It will be useful to refer to clause 18 which reads as under:

“18. The candidates already admitted in any medical/dental colleges will not be considered eligible for admission to the course.”

5. A plain reading of the aforementioned clause shows that a candidate who was already admitted in a medical or dental college would be ineligible for admission in the other course. The said clause at times will operate harshly as in the case of the petitioner but it is meant to ensure that a candidate who has already secured admission should not abandon the studies after the commencement of that course to seek admission in another course which is in public interest, for otherwise it would result in the wastage of the seat in the course in which he has taken admission, and further, such a change would deprive another eligible candidate from seeking admission to the other course. Obviously, the intention of the authority concerned in framing clause 18 appears to be to ensure that a candidate who has already secured admission with his free will in any course (MBBS or BDS) should complete that course and should not change his mind in midstream. It, therefore, follows that the bar is intended to be operative during the period of the course in which a candidate has taken admission. After completing that course or in the event of abandoning the course (MBBS/BDS) and not studying for the normal period (4/5 years, as the case may be) the candidate would become eligible after the end of such period of the course to seek admission in the course of his choice provided other conditions of admission are satisfied. In other words, the bar under clause 18 in this case

will cease after the BDS course for the academic year 2000-01, in which the petitioner has taken admission comes to an end after 5 years. In the light of the above observations the petitioner will be free to seek admission in the course of her choice after the end of the BDS course which commenced in 2000-01.”

(emphasis supplied)

4. Much has been argued out by the counsel for the appellant to the effect that by securing admission in Gauhati Medical College before the prescribed last date, there cannot be a forfeiture of his right to get admission in Armed Forces Medical Colleges, for which the counselling was delayed. We are not inclined to accept this contention. It ought to be kept in mind that a candidate cannot get admission in violation of admission process. The Information Bulletin for admission in Post Graduate Course in Medical Colleges, managed by respondent No.2 is explicitly clear and unambiguous and does not require any interpretation. The appellant having already secured admission in PG Medical Course in Gauhati Medical College can pursue his Post Graduation Study in M.S. (ENT) at Gauhati Medical College.

5. In view of the aforesaid facts and having perused the Information Bulletin, there is no prima facie case in favour of this appellant, balance of convenience is also not in favour of this appellant and no irreparable loss will be caused to this appellant if the interim relief as prayed for is not granted. As the WP(C) No. 3944/2020 is pending before learned Single Judge, we are not going into further details.

6. In view of these facts, no error has been committed by the learned

Single Judge while passing the impugned order dated 7th July, 2020. Hence, there is no substance in this appeal and the same is, therefore, dismissed. WP(C) No. 3944/2020 will be decided on its merit without being influenced by the observation made in this Judgement and Order.

7. The pending application is also disposed of.

CHIEF JUSTICE

PRATEEK JALAN, J

JULY 09, 2020

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