

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.3.2021

Delivered on : 31.3.2021

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.No.4392 of 2021
and
W.M.P.No.6084 of 2021

Dr.Bharath Kumar Reddy Petitioner

vs.

1. Union of India rep. by the
Secretary to Government,
Ministry of Health & Family Welfare,
New Delhi.
2. Jawaharlal Institute of Postgraduate
Medical Education & Research
rep. by its Director
Puducherry.
3. The Dean,
Jawaharlal Institute of Postgraduate
Medical Education & Research
rep. by its Director
Puducherry.
4. The National Medical Commission,
rep. by its Chairman,
Pocket-14, Sector-8, Dwarka Phase-1,
New Delhi 110 077.

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the respondents to admit the petitioner in DM (Neurology) Super-Speciality Course for the year 2021 session in accordance to his merit in the available vacant seat.

For Petitioner : Mr.T.Sai Krishnan

For R1 : Mr.Rajesh Viveganandan, CGSC
For RR2 & 3 : Mr.M.T.Arunan, Standing Counsel
For R4 : Ms.Subaranjini Anandh

ORDER

The petitioner, a post graduate in the field of General Medicine applied for DM Super-speciality course offered by the second respondent institution in the field of Neurology for the Academic year 2020-2021. The second respondent, an Institution of national importance, is a Government of India Institution established in the year 1956 and imparting undergraduate, post graduate and Super-speciality Medical training through a working Hospital. The students are selected by the 2nd respondent Institution by conducting an Entrance Examination on the merit basis. The candidates, who are selected, will be appointed as their Senior Resident in the respective Departments.

2. The second respondent offered DM/M.Ch courses for the year 2021 through online process on 16.10.2020 and an online All India Entrance Examination was conducted on 6.12.2020. Based on the performance of the candidates in the Entrance Examination, the Merit List was published in the website of the second respondent on 10.12.2020 and in the field of Neurology, the second respondent had short-listed eight candidates in the Merit List and this petitioner stood as fifth rank holder in the said Merit List. The candidates, who were admitted in the second respondent Institution as per the Merit List, got opportunities from NIMHANS, Bangalore and AIIMS, New Delhi and therefore. some of the candidates have left and on account of which vacancies arose.

3. The petitioner was waiting for a call from the second respondent Institution that he would be accommodated in a seat that fell vacant by conducting second counselling and also made a request through email on 18.2.2021. Since the petitioner has not been called, he approached this court for a mandamus directing the second respondent to admit the petitioner in DM (Neurology Super-speciality) Course for the year 2021 in accordance with his merit in the available vacant seat.

4. In response to the writ petition, the third respondent filed a counter affidavit on behalf of second respondent also stating that they have prescribed the cut-off date for admission for the DM/M.Ch Courses as 30.1.2021 and the vacancy arising after the cut-off date cannot be filled up. It is admitted in the counter affidavit that the first candidate in the Merit List did not join the course and the next two candidates have joined the courses on the seats for DM Neurology were filled. The petitioner was placed at Serial No.5 in the list and there was

no seat vacant as on 30.1.2021 and therefore, the admission process was closed on 30.1.2021 as per the prospectus.

5. Mr.M.T.Arunan, learned counsel appearing for the respondent-Institution would submit that any student admitted in any course may, for any reason, resign the seat and post by following the due resignation process at any point during that course and it cannot be ascertained in advance as to who will resign from which course and therefore, they have closed the admission process and the same cannot be kept open indefinitely and those seats which fell vacant within the cut-off date were considered and it is not possible for the Institution to offer any admission to the next person in the waiting list which becomes infructuous as on 30.1.2021.

6. However, the third respondent admitted in para 11 of the counter as under:-

"11. It is further submitted that it is wrong to state that the said seat is going to remain vacant or JIPMER authorities are happy to let it go waste because that seat will be filled by a non-academic senior resident trainee. The schedule for admission process is finalised after due consideration by the competent authorities and for the best of academic activities and patient care. In fact, if the petitioner or another candidate had been given admission against a vacancy that arose after the cut-off date of 30.1.2021, it could be argued that the Institute had unlawfully tried to benefit the person."

7. Mr.Sai Krishnan, learned counsel appearing for the petitioner, by referring the prospectus issued by the second respondent Institution for the DM Courses of 2020, submits that the second respondent has fixed the cut-off date as 29.2.2019 (sic for 2020) for the last year course and the second respondent, being an autonomous Institution, can prescribe the cut-off date on its own and all other similar Institutions offering DM courses such as AIIMS have fixed the cut-off date only as 28.2.2021 and strangely the second respondent alone as prescribed the cut-off date as 30.1.2021 and if the contention of the third respondent is admitted, then they ought not have admitted any student to the DM courses after the prescribed cut off-date, but they have accommodated a non-academic Senior Trainee from that Institution who has not participated in the selection process conducted by the second respondent Institution. The learned counsel for the petitioner has also drawn the attention of this court to the prospectus issued by the second respondent Institution for the year 2020 and the

prospectus issued by various other institutions.

8. The cut-off date is prescribed not in pursuant to the orders of this court and the cut-off date has been prescribed by the Institution and the Institution has also reserved its right in the said prospectus that they can make changes to the information provided in the prospectus based on the directives from the competent authorities. The learned counsel for the petitioner has also pointed out the Important Note in the Prospectus of the second respondent at page 119 of the typed set of papers wherein it is stated as under:-

"JIPMER reserves the right to make changes in the information provided in this Prospectus based on directives from competent authorities. This cannot be quoted for any sanction.

NOT withstanding the information given in this Prospectus, JIPMER, has the ultimate right to decide on any issue as per its Rules and Regulations."

9. According to the learned counsel for the petitioner, the cut-off date can be modified by the Institution and the Institution in the method of selection also stated that the last date for admission to DM/M.Ch and MD courses but, against their own prospectus, the second respondent has filled up the vacant seat with a non-academic Senior Resident Trainee without considering this petitioner from the waiting list.

10. This court paid its anxious consideration to the rival submissions and also perused the materials on record.

11. The selection process for the DM course for the year 2021 was made by the second respondent Institution through online process and by conducting Entrance Examination and based on the Entrance Examination, a Merit List was also drawn and this petitioner stood as rank No.5 in the Merit List. A few candidates, who got accommodation from the Merit List got offers from some other Institutions such as AIIMS and they had discontinued the course and joined such Institutions. One student by name Abinash Swain discontinued the course on 13.2.2021 and joined some other Institution.

12. The case of the petitioner is that he is on the next in line from the waiting list and the respondent Institution, who ought to have accommodated the petitioner in the vacancy that arose on account of resignation of Dr. Abinash Swain has denied opportunity to the petitioner by referring the cut-off date as 30.1.2021.

13. The second respondent Institution is an autonomous Institution and they are fixing the cut-off date on their own and not by any directions of any court as that of the cut-off date prescribed by the Hon'ble Supreme Court for MBBS course. All other Institutions such as AIIMS, who are also offering the

super-speciality courses, have prescribed the cut-off date for admission of this course as 28.2.2021. Even this second respondent had fixed the cut-off date as 29.2.2020 for the previous year selection, however, for this year alone, the cut-off date for admission has been prescribed as 30.1.2021. The second respondent is having a right to make changes in the information provided in their prospectus and therefore, they ought to have filled up the vacancy which arose on account of resignation of Dr.Abinash Swain, by considering the candidature of the petitioner, however, strangely they have accommodated a Non-academic Senior Resident Trainee from their Institution.

14. The respondent Institution has offered the course by conducting an Entrance Examination and selecting the candidates and a merit list is also drawn and this petitioner stood as 5th rank holder. On account of the vacancy arose after the resignation of one of the candidates, the petitioner was due to get a seat from the waiting list, but the petitioner has not been selected by the Institute by referring the cut-off date in the prospectus. On the other hand, they have accommodated a Non-academic Senior Resident Trainee through back door without any Entrance Examination. It appears that the selection process in accommodating the vacancy that arose out of the resignation of Dr.Abinash Swain has not been conducted in a fair and transparent manner. Therefore, the accommodation of Non-academic Resident Trainee, in the vacancy that arose on account of resignation of Dr.Abinash Swain, is not made in accordance with the prospectus. Though the said Non-academic Resident Trainee is not arrayed as a party in this writ petition, this court disposes this writ petition holding that he is not in the selection process and has been accommodated without any selection process.

15. In the light of the above discussions, this court is inclined to allow the writ petition with a direction to the respondents to admit the petitioner in the DM Super-speciality Course for the year 2021 in the vacancy that arose on account of resignation of Dr.Abinash Swain on 13.2.2021. Accordingly, the writ petition is allowed. No costs. The connected Miscellaneous Petition is closed.

WEB COPY
Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

ssk.

To

1. Union of India rep. by the
Secretary to Government,
Ministry of Health & Family Welfare,
New Delhi.

2. Jawaharlal Institute of Postgraduate
Medical Education & Research
rep. by its Director
Puducherry.

3. The Dean,
Jawaharlal Institute of Postgraduate
Medical Education & Research
rep. by its Director
Puducherry.

4. The National Medical Commission,
rep. by its Chairman,
Pocket-14, Sector-8,
Dwarka Phase-1,
New Delhi 110 077.

+2cc to Mr.M.T.Arunan, Advocate SR.No.20937

+1cc to Mr.T.Saikrishnan, Advocate SR.No.20940

P.D. ORDER IN W.P.No.4392/2021

GSM(CO)
GMY(16/04/2021)

सत्यमेव जयते

WEB COPY