

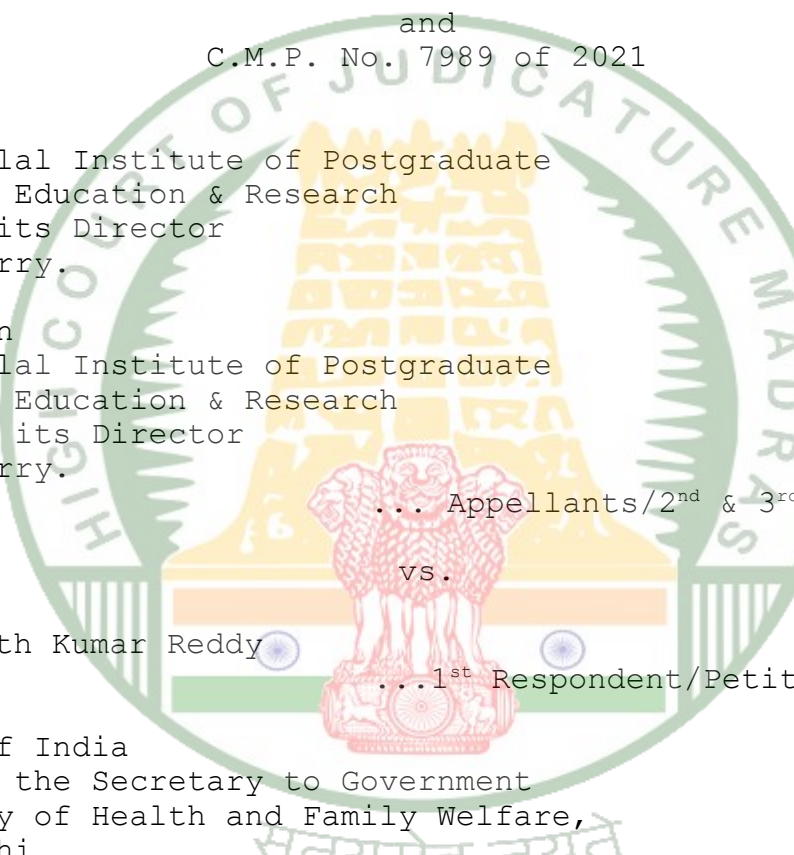
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.05.2021

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
and
THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.A. No. 1244 of 2021
and
C.M.P. No. 7989 of 2021

- 
1. Jawaharlal Institute of Postgraduate
Medical Education & Research
Rep by its Director
Puducherry.
2. The Dean
Jawaharlal Institute of Postgraduate
Medical Education & Research
Rep. by its Director
Puducherry.
- ... Appellants/2nd & 3rd Respondents
- vs.
1. Dr.Bharath Kumar Reddy
...1st Respondent/Petitioner
2. Union of India
Rep. by the Secretary to Government
Ministry of Health and Family Welfare,
New Delhi.
...2nd Respondent/1st Respondent
3. The National Medical Commission
Rep by its Chairman,
Pocket - 14, Sector - 8,
Dwarka Phase - 1,
New Delhi - 110 077.
...3rd Respondents/ 4th Respondent
- WEB COPY

Prayer: Writ Appeal is filed under Clause 15 of Letters Patent,
to allow this Writ Appeal by setting aside the order dated
31.03.2021 in W.P. No. 4392 of 2021.

For Appellants : Ms. Sunitakumari

For Respondents: Mr. T.Sai Krishnan (For R1)

: Mr. Rajesh Vivekananthan (For R2)

J U D G M E N T

(Order of the Court was made by P.D.AUDIKESSAVALU, J)

(through video conferencing)

Heard Ms. Sunitakumari, Learned Counsel for the Appellants, Mr. T.Sai Krishnan, Learned Counsel for the First Respondent and Mr. Rajesh Vivekanandhan, Learned Counsel for the Second Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Intra Court Appeal arises out of the order dated 31.03.2021 in W.P. No. 4392 of 2021 passed by the Writ Court. The parties hereinafter referred to as per the description of the Writ Petition for the sake of convenience.

3. The Second Respondent is a Medical Institution established by the Government of India in Puducherry, imparting undergraduate, post graduate and super-speciality medical training through a working hospital. The DM/M.Ch Course for the year 2021 was offered by the Second Respondent through online process on 16.10.2020 and All India Entrance Examination had been conducted on 06.12.2020 and merit list was published in its website on 10.12.2020 showing that the following eight candidates had been shortlisted in the merit list for filling up two general seats in DM (Neurology):-

JIPMER DM/M.CH ENTRANCE EXAMINATION - JANUARY 2021 SESSION			
RANKED MERIT LIST - 8936 DM Neurology			
Sl.No	Name of the Candidate	Roll No.	Percentage
1.	PAKINA KRISHNA KISHORE	2101442196	57.750
2.	KADARLA SHIVASAIKRISHAN	2101442202	55.000
3.	ABINASH SWAIN	2101440481	53.250
4.	SHUBHAM GUPTA	2101441308	52.500

JIPMER DM/M.CH ENTRANCE EXAMINATION - JANUARY 2021 SESSION			
5.	M. BHARATH KUMAR REDDY	2101441666	51.000
6.	NOEL JAMES E	2101441190	50.750
7.	MEERA R	2101441881	50.250
8.	HARISWAR PARI	2101441743	50.000

4. According to the Second Respondent, the candidate ranked at Serial No.1 in the merit list did not join the course, the candidates ranked at Serial Nos. 2 and 3 in the merit list, viz., Dr.Kadarla Shivasaikrishan and Dr.Abinash Swain, completed the admission procedure and joined the course before 31.01.2021. However, the said Dr.Abinash Swain discontinued the course on 13.02.2021 after paying the penalty of Rs. 3,00,000/- plus one month's salary in lieu of notice period. Thereafter, the Petitioner on 22.02.2021 filed the Writ Petition in W.P. No. 4392 of 2021 for directing the Respondents to admit him in the DM (Neurology) Super-Specialty Course for the year 2021 in accordance with his merit in the available vacant seat. The Second Respondent resisted the Writ Petition that since the admission for the year 2021 had closed on 30.01.2021, the remaining persons ranked in the merit list could not be admitted in the vacancy that arose after that date, and it was further explained that the seat would be filled up by non-academic senior resident trainee.

5. The Learned Judge, who heard the Writ Petition, in the order dated 31.03.2021 did not accept the said contentions of the Second Respondent and proceeded to hold as follows:-

"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 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."

Aggrieved thereby, the Second Respondent has preferred the present Writ Appeal.

6. The primordial contention of the Learned Counsel for the Second Respondent is that the Writ Court is not justified in holding that the cut-off date for admission ought to have been fixed as '28.02.2021' as done by certain other institutions, instead of '30.01.2021' that has been mentioned in the prospectus in this case. It is highlighted that the Second Respondent in the Counter-Affidavit dated 09.03.2021 had explained this position as follows:-

"10. It is submitted that AIIMS and other institutions are free to decide their own admission closing dates as per their schedule and processes. In fact, the various institutions participating in the common entrance test specified and followed different cut-off dates. These different cut-off dates were announced in advance in the prospectus of each institution, and were well known to the candidates, including the petitioner. None of them lodged any representation about different cut-off dates in advance. Hence the argument that JIPMER should use the same date as AIIMS did is an afterthought, which has been brought in only to avail benefit that is not done."

There cannot be any dispute that the cut-off date fixed for making admissions in the courses of study in sacrosanct, which cannot be normally changed without any acceptable reason. However, it cannot be said that the cut-off date for completing the admission in all Medical Institutions throughout the country has to be the same, in the absence of any statutory requirement or binding ruling of the Hon'ble Supreme Court in that regard. The circumstance that the Second Respondent had reserved the right to make changes in the prospectus cannot be treated as empowering the Writ Court to extend the cut-off date from 30.01.2021 to 28.02.2021 merely because certain other Medical Institutions had fixed that date and the Second Respondent had adopted 29.02.2020 as the cut-off date in the previous year. Viewed from that perspective coupled with the explanation of the Second Respondent, which has been extracted, it is not possible to sustain the conclusion arrived by the Writ Court on that aspect

of the matter.

7. This takes to the next facet as to whether the Second Respondent has committed any illegality by accommodating a non-academic senior resident trainee through back door without any entrance examination to fill up the vacancy that arose. The Second Respondent in the Additional Affidavit dated 24.04.2021 filed in this appeal has stated as follows:-

"2.1. It is submitted that the DM super Specialty courses are 3 year courses after MD. It is further submitted that MD or equivalent degrees are the essential qualification required to appear in the entrance examination for these courses. Any student joining this course is also simultaneously appointed as a Senior Resident (also called as Academic Senior Resident) with a basic pay of Rs.67700 (Level 11, Cell 1, plus non-practising and other allowances), as admissible to temporary employees, per month in the 1st year. An increment is given at the start of 2nd and 3rd years. Thus, the DM students also work as doctors and hold a 3-year tenure temporary post of Senior Resident. Therefore, they have dual status - of a DM student as well as a temporary employee (Senior Resident).

....
2.4. It is further submitted that since the DM students also work as Senior Resident (Academic Senior Resident) in the hospital, if a seat cannot be filled or becomes vacant, there is a provision to appoint a doctor with MD or equivalent degree as a Senior Resident, who is also called as a Non-Academic Senior Resident, because such a person is not pursuing an academic DM course. He is a Senior Resident who provides patient care service but is not working for a degree against the vacant post. Such a person is an employee but not a student and no Doctorate Degree is awarded to him. The entry qualification of a Non-Academic Senior Resident is similar to that of an Academic Senior Resident, and such persons would have been eligible to appear in the entrance examination for DM course. They may be appointed for a period of 3 to 6 months and can be reappointed for further spells. They do similar work in the hospital, but without being registered for a doctorate degree, and receive the same salary as that of an Academic Senior Resident.

2.5. It is further submitted that the decision to appoint a non-academic Senior Resident is based on the volume of patient care workload in the department. If

the patient care workload is high, the vacant post Senior resident (Academic) is filled up by a non-academic Senior Resident. The appointment of such non-academic Senior Resident is on contract basis and the period of contract appointment initially may range from 3 months to 6 months and can be extended. It may be in one spell or in more than one spell. The decision whether to appoint a non-academic Senior Resident is taken based on workload in the department and if it is required in the interest of patient care. If it is decided to fill up the temporary post (such as one fell vacant on resignation of Sl.No.3) with a non-academic Senior Resident, a separate notification is issued to invite applications from those having the qualification of MD / DNB (Neurology), MD / DNB (General Medicine and MD / DNB (Pediatrics) and selection is based on written examination / interview.

Hence it is submitted that there is no back-door method of filling up of vacancy by any candidate as observed in the order of the Learned Single Judge in the Writ Petition No. 4392 of 2021. The Appellant is a well-reputed Institution and has been following the time line laid down in the prospectus and also ensuring patient care depending on the work load. Any contractual appointment against the vacant post is done only to ensure running of patient care services and is made in keeping with principles of transparency and equality of opportunity to all those eligible."

On a perusal of the cogent reasons stated, this Court is of the considered view that it is not possible to accept the conclusion arrived by the Writ Court that the Second Respondent has accommodated a non-academic senior resident trainee through back door without any entrance examinations, which is also not supported by any materials in that regard. There does not appear to be any infirmity in that decision-making process followed by the Second Respondent requiring interference by this Court.

8. The last question that remains is whether the Petitioner could be admitted to the course after 30.01.2021 having regard to his rank in the merit list, as noticed earlier. It is pointed out by the Second Respondent that the discontinuance of the said Dr.Abinash Swain on 13.02.2021 after the cut-off date that had lapsed on 30.01.2021, is a fortuitous circumstance, meaning thereby that such vacancy arising during the course of study after that cut-off date cannot confer any legal right to a candidate in the waiting list to be admitted to the course. That apart, it is also borne out from the record that even if it was decided to fill up the vacancy with the next candidate in the waiting list, it would have to be offered to

the candidate at serial No. 4, viz., Dr.Shubham Gupta, in the merit list, and the Petitioner at Serial No.5 in that merit list, could not be admitted overlooking the same.

9. In view of the foregoing discussion, the Writ Appeal is allowed. The relief granted to the Petitioner in the impugned order dated 31.03.2021 in W.P. No. 4392 of 2021 passed by the Writ Court, which is erroneous, is set aside and the Writ Petition is dismissed. Consequently, the connected civil miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar
(Vacation Officer)

//True Copy//

Sub Assistant Registrar

dm

Note: Issue order copy by 13.05.2021.

To

1. The Secretary to Government
Ministry of Health and Family Welfare,
New Delhi.
2. The Chairman,
National Medical Commission
Pocket - 14, Sector - 8,
Dwarka Phase - 1,
New Delhi - 110 077.

+cc to M/s.Sunitha Kumari,
Counsel for Appellant, Sr.27142

+cc to M/s.T.Sai Krishnan,
Counsel for R1, Sr.27200

W.A. No. 1244 of 2021
and
C.M.P. No. 7989 of 2021

KJ(CO)
baf 17/05/2021