

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. **CWP-16011-2019 (O&M)**
Date of decision : April 08, 2021

Ravinder Singh and othersPetitioners
Versus
All India Council for Technical Education and anotherRespondents

2. **CWP-27574-2019 (O&M)**
Sohan Singh and othersPetitioners
Versus
All India Council for Technical Education and othersRespondents

3. **CWP-29392-2019 (O&M)**
Neeraj Singh and othersPetitioners
Versus
All India Council for Technical Education and othersRespondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Harsh Aggarwal, Advocate for the petitioners.

Mr. Ravi Sharma, Advocate for respondent No. 1.

Mr. Anish Verma, Advocate for respondent No. 2.

Mr. Ankur Sharma, Senior Panel Counsel for Union of India
(in CWP-27574-2019 and CWP-29392-2019)

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

This order shall dispose of CWP Nos. 16011, 29392 & 27574 of 2019.

The above said writ petitions are taken up for hearing together and are being disposed of by a common order as primary question involved in all these writ petitions is whether the petitioners, who are students pursuing their B.Tech Courses with respondent – Institute i.e. Technical Engineering and Research Institute, Kurukshetra are entitled to scholarships under the Prime Minister Special Scholarship Scheme (for short – ‘PMSSS’) for the students of Jammu and Kashmir

for academic session 2016-2017 in CWP-16011-2019 and academic session 2017-2018 in CWP-29392-2019 and CWP-27574-2019.

Pursuant to submission of “Report of the Expert Group to formulate a job plan for the State of Jammu and Kashmir”, PMSSS was formulated in order to build capacities of youth of Jammu and Kashmir to enable them to optimize their academic potential and turn to productive activities besides providing an opportunity to them to interact with their counterparts elsewhere, to join the mainstream and become a part of India’s growth story. Notification dated 24.09.2012 was issued by the State of Jammu and Kashmir, Department of Higher Education for implementation of the PMSSS for the academic year 2011-12. Scholarship was provided to meet the expenditure towards tuition fee, hostel fee, costs of books and other incidental charges for the eligible students in the merit list. 5000 scholarships were declared to be provided out of which 4500 scholarships would be for general degree courses, 250 for Engineering and 250 for medical seats. Various eligibility conditions including that of the students having passed class 12th or equivalent examination through the State Board of School Education Jammu and Kashmir or the Central Board of Secondary Education (CBSE) affiliated schools in Jammu and Kashmir and income ceiling of Rs.4.5 lakhs per annum was provided. All India Council for Technical Education (for short – ‘AICTE’) was entrusted the responsibility of implementation of the scheme and release of scholarships to all such eligible candidates. Thereafter Special Scholarships Scheme was notified for subsequent years too.

Brief facts in each of the three writ petitions are described separately for the sake of convenience at the outset. However, it is pertinent to note at this stage that there is no dispute regarding petitioners in all the writ petitions fulfilling the eligibility conditions prescribed in the respective schemes. All the petitioners had secured their 10+2 certificates either from J&K Board or CBSE through the

affiliated schools at Jammu and Kashmir. Income criteria etc. is also fulfilled by all the petitioners. There is further no dispute regarding respondent – institute being one of the prescribed institute in terms of PMSSS and recognised by the AICTE. All petitioners seek scholarship in the Engineering stream.

CWP-16011-2019

Petitioners herein challenge order/communication dated 05.01.2018 (Annexure P16) issued by AICTE to Director of respondent No. 2 whereby request for release of scholarship to all the petitioners has been rejected. Petitioners duly applied for registration with AICTE with all requisite documents in May, 2016. Merit list, which included names of the petitioners was drawn upto 7753 by AICTE (Annexure P4) with total number of scholarships to be released, being 5000. Admission notice was issued by AICTE on its website in June, 2016, wherein different dates for counselling for admission under PMSSS was given. It is specifically mentioned in said notice that students in the merit list from 4001 and 5000 would be interviewed on 02.08.2016 and from 5001 onwards till the last number in the merit list on 03.08.2016. Petitioners are stated to have gone for attending the counselling on 03.08.2016 at the prescribed place in Jammu and Kashmir but the authorities it is alleged refused to let them participate in counselling on the pretext that they are below the merit of 4500. Thus, it is claimed that petitioners were not even marked present for counselling. Another notification dated 08.08.2016 was issued for counselling to be held on 13.08.2016. Counselling was restricted upto 4500 mark for Engineering stream at NITTR Chandigarh. Petitioners, it is stated, went to attend the said counselling as well but they were not marked present. Petitioners No. 1, 3, 8, 11, 12, 13, 14 and 16 it is stated were not permitted to participate in the counselling. It is stated that another notification dated 23.08.2016 (Annexure P7) was issued regarding eligibility of candidates for scholarship under PMSSS. Following candidates are stated to be eligible:-

“1. Candidates allotted seats through the centralized counselling process for the academic year 2016-17.

2. All the provisionally eligible candidates for PMSSS 2016-17 whose name appears in the FINAL MERIT LIST and have taken admission to undergraduate courses for Academic Year 2016-17 on their own in any of the following category of Institutes outside the State of J&K.

- a. Centrally Funded Institutes (like IITs, NITs and Central Universities etc.)
- b. AICTE approved Institutions.
- c. Institutions approved by UGC under section 12B.
- d. Students taking admissions under MEDICAL STREAM in Institutions approved by respective regulatory authority (Medical Council of India MCI & Dental Council of India DCI).”

Petitioners, it is stated, took admission with respondent No.2 being in the final merit list of AICTE within the stipulated time schedule i.e. before 15.08.2016 as laid down by the Hon’ble Supreme Court in **Parshavanath Charitable Trust and others Vs AICTE another (2013) 3 SCC 385**(Annexure P9). Details of admission of the petitioners could, however, not be uploaded on the portal of Haryana State Technical Education Society by respondent No. 2 as petitioners could not be physically present in the Institute for their biometrics, although petitioners had duly submitted their applications with respondent No. 2 within time. Respondent No. 2 filed CWP-10799-2017 challenging rejection of the present petitioners’ candidature by the Haryana State Technical Education Society, Kurukshetra University, Kurukshetra which was allowed by the Division Bench of this Court on 27.11.2018 (Annexure P8). Much to their surprise, petitioners, it is stated, received letter dated 25.03.2018 from respondent No. 2 intimating that AICTE vide its letter dated 05.01.2018 has declined to grant scholarship under PMSSS, therefore, fee etc. should be deposited by the students. Request of the respondent – institute to release the scholarship was rejected by AICTE as

reflected in order dated 05.01.2018, Annexure P16, on the ground that out of 25 students, only 15 attended counselling, thus, 10 absentee students were outrightly ineligible. 10 of the 15 students who participated in counselling were held ineligible due to low ranking. 5 of the students who were allotted colleges failed to submit their Direct Benefit Transfer (for short – ‘DBT’) applications on portal, duly verified by the allotted college authorities, thus, were not considered for grant of scholarship. Petitioners No. 4, 5, 6, 7 and 15 are the students who had been allotted other colleges. Aggrieved therefrom, CWP-16011-2019 has been filed.

CWP-27574-2019

Petitioners in this writ petition claim scholarship for the academic session 2017-18. Though it is stated in the writ petition that policy of AICTE with regard to admission under PMSSS to the extent that it does not permit the students to change the prescribed allotted institute is illegal, it was submitted at the time of the arguments that reading of the PMSSS as a whole in fact does not bar change of the allotted institution by the candidates and the scheme in effect takes care of the situation where candidates have taken admission to institutes on their own.

Petitioners in this writ petition claim scholarship for the academic session 2017-18. They applied for the scholarships in terms of PMSSS being fully eligible as per the criteria provided in 2017-18 scheme. There is no dispute that the petitioners registered under the same and are reflected in the merit list. Petitioners, it is submitted, were called for counselling and they were allotted institutes at far flung places where it was not possible for them to pursue their studies. Reference is made to petitioner No. 9, who was allotted an institute namely PriyaDarshani College of Engineering, Nagpur in the State of Maharashtra. Petitioner No. 9 raised a grievance that the allotted college is not suitable to him and that he would seek admission at respondent No. 2 at Kurukshetra. Said petitioner within the stipulated time sought admission at respondent No. 2 and

requested the respondents for a change in the college. All other petitioners, it is submitted, also did not find various colleges allotted to them to be suitable for pursuing their studies and preferred to join respondent No. 2. It is stated that respondent No. 2 is recognised by AICTE, falls in the prescribed list under the Scheme and admissions were within permissible sanctioned intake. Petitioners' request was not accepted and scholarship to the petitioners was declined on the ground that they had not uploaded their joining report in the academic session 2017-18. Aggrieved therefrom, this writ petition was filed.

CWP-29392-2019

Petitioners herein seek scholarship for the academic year 2017-18. Petitioners in this case duly registered online in terms of 2017-18 PMSSS. Total merit list of 19705 was drawn though AICTE confined the total number of scholarships to 5000. Petitioners, in this case, it is submitted could not participate in the counselling at all due to disturbed conditions in the State of J&K. It is submitted that the Hon'ble Supreme Court had also extended the cut-off date for admissions from 15.08.2017 to 30.09.2017, on an application moved by the State of Jammu and Kashmir. Reference is made to notification dated 13.09.2017 (Annexure P13) issued by the Government of Jammu and Kashmir, Higher Education department, wherein it is informed that in view of order dated 12.09.2017 of the Hon'ble Supreme Court in IA No. 89915 of 2017 in MA No. 863 of 2017 in Civil Appeal No. 9048 of 2012, all candidates who have received provisional admission letters from AICTE under PMSSS and were yet to get admission in the allotted colleges should join their respective colleges by or before 30.09.2017. Petitioners, it is stated, could not participate in the scheduled counsellings due to disturbed conditions in the State and also for the reason that students who had participated in the counselling were not being allotted, the institutes and disciplines of their choice in Engineering. Respondent No. 2 –

institute was found to be suitable for requirements of the petitioners. They sought and were granted admissions well before the cut off date of 30.09.2017. In response to application under the Right to Information Act, petitioners came to know that only 3101 scholarships were released and about 1900 were still available for the academic session 2017-18. Petitioners, it is submitted, sought consideration of their candidature for the scholarship but to no avail. Hence aggrieved, CWP-29392-2019 has been filed.

Learned counsel for the petitioners in all the writ petitions submits that respondent – authorities have grossly erred in rejecting the grant of scholarships to the petitioners. It is submitted that once the petitioners fulfill the eligibility criteria and fall within the parameters of the PMSSS, there is no question of denying scholarship to them. Merely because the petitioners have taken admission on their own, cannot be a ground to deny scholarship to them. Learned counsel in respect to the petitioners in CWP-16011-2019, first refers to PMSSS 2016-17 to submit that as per eligibility criteria students who have secured admissions on their own to institutions which are recommended by AICTE, are entitled for scholarship. Petitioners, it is submitted, did not fall in any of the categories of the students who are specifically excluded. It is submitted that merely because the candidate has not participated in the counselling cannot be a ground to deny scholarship and that too when the candidate was arbitrarily not allowed to participate on a specious ground of being lower in merit, when the seats were admittedly available.

It is contended that it is wrongly mentioned in order dated 05.01.2018 that no seat in the professional/Engineering colleges were allotted to ten students as they did not qualify in the merit list due to their low ranking. It is submitted that there is no basis for the same as the respondents admittedly did not go beyond serial No. 4500. Scholarships are very much available, therefore, there is no

justification for denying the same to the petitioners, who being fully eligible are seeking the same. It is contended that in PMSSS 2016-17 there is nothing to indicate that the candidate, who has not participated in the counselling cannot be granted scholarship. Third objection raised in the impugned order dated 05.01.2018 is that five of the students, who were allotted the colleges under general courses, failed to submit their DBT applications on the portal duly verified by the allotted college authorities. The petitioners had joined an institution different than the one allotted, as the college and discipline allotted were not suitable. It is submitted that due to any shortcoming on the part of the institution, the petitioners cannot be held responsible. Moreover, the said institute not being the one allotted by the authority, necessary details could not be uploaded on the portal. Learned counsel submitted that respondent No. 1 has not disbursed all the available scholarships which were sanctioned for the Engineering seats and neither any such objection regarding non-availability of scholarships is being raised. Learned counsel refers to minutes of 17th meeting of Inter-Ministerial Committee of Special Scholarship Scheme of Jammu and Kashmir held on 25.02.2016 in respect to the methodology to be adopted for award of scholarship for the academic year 2016-17 (Annexure P19). It is mentioned therein that the candidates, who are in the merit list, have the option either to take admission on their own to the institutions, which are recognized by AICTE or approved by UGC under Section 2(f) and 12(B) or respective Regulatory body or seek admission through counselling for supernumerary post. It is submitted by learned counsel for the petitioners that counselling would be a sine-qua-non for supernumerary seats only and not for the others as are involved in the present petitions.

Learned counsel with reference to the petitioners in all the writ petitions submits that the respondents – authorities are not justified in taking a stand that even if a particular institute allotted to the candidate is not suitable for

the reason that it might be in far flung area or is otherwise not as per the requirements of the candidate, the candidate does not have a right to scholarship in case he or she takes admission to another institute of his own liking and suitability despite the other institute being duly recognized by AICTE and falling within the list of prescribed institutes. Learned counsel for the petitioners refers to the Minutes dated 05.05.2017 of 20th meeting of the Inter-Ministerial Committee (Annexure P5) to submit that the said Committee was conscious of the ground reality when it is observed that “Universities, who on their own, have admitted the J & K students under the scheme may be directed by the UGC to ensure smooth completion of their courses”. It is also observed that from the academic year 2017-18 only those students who have taken admission to the allotted institutions or who have taken in Central Universities or Medical/Engineering Colleges based on Government conducted National level examination, would be considered if otherwise eligible. He also refers to PMSSS of 2017-18 to say that no such bar is created. Thus, taking admission on their own by the candidates and/or mere non-participation in counselling, it is argued, should not be a ground to reject the claim of the petitioners. Learned counsel relies upon judgment of Jammu and Kashmir High Court in OWP No. 710 of 2015 upheld in LPA (OW)-12-2018 vide order dated 26.03.2018 (Annexure P18) (in CWP-16011-2019). It is, thus, prayed that all these writ petitions be allowed.

Learned counsel for the respondent – AICTE has resisted the writ petitions and argued that participation in the counselling is infact a sine-qua-non for release of scholarship to the candidates. It is submitted that insistence on counselling is made in order to prevent any kind of misuse or squandering of the scholarship amounts and to ensure that amount in question reaches the targeted group. Learned counsel for the respondent – AICTE submits that insofar as the PMSSS of 2017-18 is concerned, it is specifically provided that eligible students

under the scheme are directed to choose courses from the institutions/universities, the list of which is displayed on the website of AICTE and that no scholarship would be paid to students who take admission in any other institute or university and that all candidates are nevertheless required to attend the nearest chosen counseling centre and that scholarships would be disbursed through DBT after joining the institutions and uploading the joining report to AICTE portal. It is submitted that once PMSSS is in place it is imperative that the benefits thereunder be disbursed strictly in accordance with the provisions therein. All petitioners in the three writ petitions, it is submitted, do not fall within the parameters of PMSSS and reliance on the judgment of the Jammu and Kashmir High Court is of no use to the petitioners as it was a one time concession afforded to the petitioners therein and that too on the ground of peculiar circumstances, which had arisen therein. It is, thus, prayed that these writ petitions be dismissed.

Respondent No. 2 – institute has taken a specific stand that all the petitioners were duly admitted by it, strictly within parameters of PMSSS 2016-17 and 2017-18 respectively. It is stated that candidature of the petitioners could not be uploaded on the AICTE website because petitioners had not been allotted the institute through counselling. Some of the petitioners in CWP-16011-2019, it is stated had been refused participation in the counselling. It is certified by respondent No. 2 that all the petitioners were duly admitted in the respondent – institute within the stipulated period and within sanctioned limit. It is affirmed that all the petitioners in CWP-16011-2019 have completed the course with requisite marks. Petitioners in other two writ petitions have nearly completed the entire course and it is only the final semester which is left. Said petitioners are continuing with their studies and there has been no break in studies of any of the petitioners in all the three writ petitions.

Heard learned counsel for the parties and have gone through the files with their able assistance.

It is a matter of record that PMSSS was formulated with a view to provide a specific benefit to the students of Jammu and Kashmir in order to enable them to obtain higher education and to ensure their integration in the main stream. It is specifically mentioned in the report of the Expert group pursuant to which PMSSS was formulated, that youth in the State had to live with disruptions in their education, which have impacted their ability to compete and that relatively better-off residents were able to send their children abroad as well as to reputed institutions within the country, but those with limited means did not have such options. Therefore, in order to enable the youth to optimise their full academic potential and turn to productive activities it was recommended that the scholarship scheme be floated for various courses in all Government colleges, Universities, Engineering institutions, Medical colleges and certain private institutions to be identified by the Government on the basis of objective criteria. It is indeed a laudable object which is sought to be achieved by this PMSSS floated for the first time in 2012 and thereafter for successive academic years. Some of the candidates in the year 2014-15 who could not participate in the counselling were denied scholarship. They approached the High Court of Jammu and Kashmir by way of OWP No. 701 of 2015, which was allowed on 07.06.2017, while observing as under:-

“17. When during counselling, course and college of the choice of students is to be allotted, there could be no hard and fast rule in not allowing the petitioners to pursue the course for which they had taken admission in respondent University.

18. Going by the context of "increasing access to education" as per recommendations of the Expert Group, which has been accepted, the

essence is quite visible. The implementation of the scholarship scheme has to be pragmatic and result oriented. The special concession, in the background of the special circumstances, must reach to the deserving. For so doing, flexible approach rather than rigidity shall be in-keeping with the objective to be achieved. The technicalities of trivial nature cannot be allowed to prevail so as to negate the laudable object to be achieved. True it is that grant of scholarship has to be regulated, that too with an objective of avoiding any misuse or squandering. The students who have shown their zeal and enthusiasm in pursuing approved courses in the institutions outside State of Jammu and Kashmir in the context of recommendations of the Expert Group relatable to the increasing access to education, that too in the background which persuaded the respondent authorities to introduce a Special Scholarship Scheme for Jammu and Kashmir, have to be encouraged. Prevaricative approach on hyper technical grounds has to be avoided.

19. The crux of the controversy is as to whether petitioners and similarly situated students who have taken admission in the respondent University provisionally and who have only applied as per AICTE directives but have not participated in the counselling, could be denied benefit of the scheme. The object of applying through a designated portal, a procedural requirement so as to ward off any mischief, is not denied but the question is what prevented the petitioners and other students from participating in the counselling has been clearly highlighted by the petitioners in their rejoinder by stating that in the month of September, 2014, Kashmir Valley witnessed a devastative flood. The NET facility and all other facilities were snapped by the fury of nature. Under such circumstances if the students have shown their courage and got provisional admission in respondent University, as such, are pursuing the courses, can they be deprived of the benefit of the scheme. The fact that the petitioners and other students have taken admission in the respondent University and they are pursuing the course is not denied. The decision that the students who had not applied through a designated portal will not be entitled to scholarship is not that rigid so as to deny the benefit to the genuine candidates. If it would have been rigid in its operation then

for the academic year 2012-13 and 2013-14, students who took admission would not have been granted scholarship under the scheme. There is always a scope for improvement for rationalizing grant of scholarship but object is never to deny benefit to the genuine candidates.

20. In the stated facts and circumstances, an exceptional situation has been carved out for not fully adhering to the mode and method of applying and counselling, that too for a valid reason i.e. counselling center was in Srinagar city which, in the month of September, 2014, as a matter of fact, had submerged. Even though petitioners and other like students had taken admission, in case number would have been more in Mewar University, they could be shifted to other Universities or Colleges but now since Mewar University, on proper admission, has accommodated them, therefore, by releasing scholarship, in effect, object of scholarship scheme in its context was achieved. The future of the students, who have been pursuing their courses in the respondent University, is at stake. Their bona fides are free from doubt, to deny them scholarship is to put their future in jeopardy, when the Special Scholarship Scheme with its laudable objective does not permit so. Consistent with the objective, there is no justified cause for denying grant of scholarship.”

Students admitted by the respondent – institute were directed as a one time exception to be registered for scholarship and scholarship to be released in their favour, as under:

“ In the final analysis, it is directed, by way of one time exception for the academic session 2014-15, the students who have been admitted by the respondent No. 3 shall be registered for scholarship and scholarship shall be released in their favour through respective institution and also for subsequent years till they complete their courses.”

Said decision was upheld in LPA (OW)-12-2018 vide order dated 26.03.2018 (Annexure P18) (in CWP-16011-2019).

It is relevant to note that in all the present writ petitions, petitioners were duly registered and they figured in the merit list, which was drawn up by the

respondent – AICTE. They have been denied scholarships primarily on the ground that they joined an institute not allotted to them through counselling and/or they did not participate in the counselling.

Present writ petitions relate to scholarship schemes for the academic session 2016-17 and 2017-18. In the Scheme 2016-17, it is provided that total number of 5000 scholarships would be provided, 4500 seats for general degree, besides 250 each for Engineering and Medical/BDS. Provision of interchangeability of slots among Medical and Engineering streams subject to the savings accruing from the shortfall in the number of general degree is provided. It is stated that if there is a shortfall in general stream intake, the shortfall number would be converted to seats equivalent to Engineering stream (1 General stream is equal to 0.58 Engineering stream, 0.325 Medical Stream). The total number of scholarships it is provided, may reduce in the scenario when less than 4500 scholarships are sanctioned for general stream. Eligibility conditions in the 2016-17 Scheme are provided as under:-

1. Students having domicile of Jammu and Kashmir and who are of academic year 2015-1/2014-15 from J&K Board or CBSE affiliated schools located in J&K.
2. **Secured admission on their own to institutions which are recognized by AICTE or approved by UGC under section 2(f) and 12(B) or respective regulatory body** or taken admission in the institute allotted through counselling for supernumerary seat.(emphasis added)
3. Having family income of less than Rs 6 lac per annum.
4. Students have to compulsorily apply online for registration on AICTE Web portal <http://www.aicte-jk-scholarship.gov.in>

Exclusions are listed as under:-

- Categories of Students NOT eligible under the scheme are
- Students who have passed less than 12 prior to the academic year 2014-15
- Students pursuing courses through Open Universities

- Students availing benefit of other schemes
- Students gaining admission through Management Quota
- Students pursuing courses such as Diploma Courses not leading to award of a Degree
- Students pursuing Post Graduate level studies in any discipline
- Students having family income over Rs 6 lakhs per annum
- Students admitted to institution which is neither approved under 12B of UGC Act or AICTE or by respective regulatory body

It is specifically provided in the steps for process of online registration that the student is required to give preference to state whether he/she wants to take admission on his/her own or through counselling. Details regarding counselling as mentioned in PMSSS 2016-17, read as under:-

Counselling:

- Allotment for the supernumerary seats will be done through counselling only for those students in the merit list who have given their option of counselling.
- No counselling will be done for Medical seats 250 Scholarships would be awarded for medical stream on merit to those students who have taken admission on their own as per the prescribed admission procedure to Institutions approved by the regulatory body.
- **At the time of counselling the students who are in the merit and have taken admission on their own are required to submit the proof of admission.** (emphasis added)
- The students who are in the merit list and fail to submit the proof of admission or participate in counselling process for allotment of supernumerary seats, on the scheduled counselling date will not be considered under the scheme.
- Any shortfall in the number of students in the merit list of 2015-16 will be accommodated by the students in the merit list of 2014-15. Inter se merit will be maintained.

- Students are requested to visit the following sites for details of institution so that informed decision is taken at the time of counselling:

Institutions approved under 128 of UGC Act	http://www.ugc.ac.in/oldpdf/colleges/List%20of%20colleges%20as%20on%2031.12.2015.pdf
Institutions Approved by AICTE (Including Pharmacy and Hotel Management and Catering Technology)	http://www.aicte-india.org/dashboard/pages/dashboardaicte.php

Details of the scheme can be seen at – <http://www.aicte-jk-scholarship-gov.in>

Note : Selection of Students for the scholarship will be strictly based on Merit and as per the approved procedure for 2016-17. Scholarship will be DISBURSED to those students only who have taken admitted in the Academic Session 2016-17 ONLY.

Scholarships will be disbursed through DBT only after joining the institute and uploading the joining report alongwith other required documents on AICTE Portal.

Scheme for the academic session 2017-18 was also issued with the eligibility conditions, which read as under:-

ELIGIBILITY

- Students having domicile of Jammu and Kashmir and have passed 12 examination from J&K Board or CBSE affiliated schools located in J&K in academic year 2016-17 or 2015-16 only.
- Common merit list will be prepared for students of 2016-17/ 2015-16, who register themselves on portal of AICTE for

allotment of seats during counselling for academic year 2017-18.

- Having family income of Rs. 6.00 Lakh or less per annum.
- Admission will be offered to the students in selected pool of well institutions/colleges/universities, which are by AICTE or approved by UGC under Section 12(B) or respective Regulatory Bodies of Government of India only, which are fulfilling following additional criteria:
 - All autonomous Colleges
 - Colleges with NBA Accredited Programmes
 - Colleges within Top 200 of NIRF Ranking
 - Colleges in the North and North-Western States (Himachal Pradesh, Punjab, Chandigarh, Haryana, Delhi, Rajasthan, Uttar Pradesh and Uttarakhand) with atleast 50% enrolment.
 - Colleges with atleast 80% or more enrolment admissions in the rest of the country.

In respect to admission taken by the candidate on his or her own it is provided as under:-

ADMISSION ON HIS HER OWN :

- Students desirous of taking admission on his/her own in colleges outside prescribed list of colleges will be available for admission in Centrally/State Funded Institutions wherein admission are made only after qualifying entrance examination conducted by Central/State Government to become eligible for scholarship provided they have applied on-line for scholarship and their documents are verified by Govt of J&K. These students will also be required to attend counselling and mark their attendance during the counselling session.
- Students seeking admission in MBBS/BDS or in alternative medicine courses may take admission on own their only subject to clearing NEET.
- Students have to compulsorily apply online for registration on AICTE Web portal – <http://aicte-jk-scholarship.in/>

Provisions regarding exclusions are the same as in the Scheme 2016-17 except there is no exclusion based on year of completing class. Relevant provisions regarding counselling are reproduced as hereunder:-

COUNSELLING

- **Allotment of all the scholarships will be done through counselling only.** (emphasis added)

Xxx

xxx

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- List of Institutions/Universities where admissions offered would be prepared and will be displayed on website of AICTE. Eligible students under the Scheme are directed to choose the courses from these Institutions/Universities only. It may be noted that no scholarship will be paid to the students who take admission in other than the list of Institutions Universities available on the portal of AICTE except MBBS/BDS or allied medicinal courses for which supernumerary quota is not available. However, all the candidates are required to attend the nearest/chosen counselling centres.
- List of all registered students would be prepared and will be displayed on website of AICTE for information of the students.

It is relevant to note that in the present matters, it was not disputed by learned counsel for AICTE at the time of arguments that requisite scholarships are available and it is not the case of the respondents that all available scholarships have been exhausted. There is further no dispute that all the petitioners fulfill the eligibility criteria including that of the financial cap of the family income being less than Rs.6 lakhs per annum. None of the petitioners fall under any of the exclusion clauses as mentioned in PMSSS 2016-17 or 2017-18. Needless to say, specific provision has been made for participation in counselling by the candidates in order to ensure that there is no misuse of the scholarship in any manner or that it is not released to candidates not deserving or not eligible of the same. Basic principle underlying therein is that there should be no squandering of misuse of the benefit, which should reach the targeted group. It is to be noted that students had been permitted to secure admission on their own to institutions which are

recognized by AICTE. Eligibility clause of PMSSS of 2016-17 specifically refers to candidates, who have secured admissions on their own to institutions, which are recognized by AICTE **or** approved by UGC under Section 2(f) and 12(b) **or** respective Regulatory body **or** taken admission in the institute allotted through counselling for supernumerary posts. None of the writ petitions deal with the supernumerary posts. In the PMSSS 2017-2018, there is a specific provision permitting candidates to take admission in Centrally/State Funded Institutions, not even in the prescribed list wherein admissions are made only after qualifying entrance examination conducted by Central/State Government to become eligible for scholarship provided they have applied on-line for scholarship and their documents are verified by Govt of J&K.

Doubtlessly, it is mentioned that all candidates are required to attend counselling at the nearest chosen counseling centre. Specific case of the petitioners in CWP-16011-2019 is that despite being present for counselling they were not permitted to participate therein. There is no specific denial of the same while stating that all seats in the Engineering stream were exhausted at the rank of 3703, therefore, rest of the students were not considered for admission. It is pertinent to note at this stage that in reply to CWP-16011-2019, it is mentioned that students were given choice to take admission on his or her own as per the list of colleges available on the AICTE portal. Students, who had taken admissions on their own, were to submit a joining report, mark attendance and scholarship was to be given as per her choice subject to merit at the time of counselling and copies of the allotment letter were handed over to the students on the spot. However, in a paradoxical manner it is also stated that scholarship could be granted only to the students who were allotted seat through the counseling process.

It is pertinent to note that at the time of arguments, learned counsel for the respondents did not dispute that the petitioners in CWP-16011-2019 have

successfully completed being their courses. It is further verified that the petitioners in two other writ petitions have completed the course except for the last semester, which they are now pursuing. It is affirmed that there was no break in the pursuit of academic course by any of the petitioners.

PMSSS was introduced in order to benefit students who could not avail proper education due to disturbed conditions in the State. It is specifically mentioned in report by the Expert group i.e. “Report of the Expert group to formulate a job plan for the State of Jammu and Kashmir” that it was necessary to float the scholarship schemes to enable the youth to optimise their full academic potential and turn to the productive activities. It is for this laudable purpose that the schemes were circulated. Doubtlessly, the authorities are well within their rights to impose certain restrictions and regulations in order to ensure that there is no misuse of the provisions and to ensure that scholarships reach the targeted group. Participation in counselling, uploading of the forms and necessary documents by the institutions in question, is clearly a step in this direction. Learned counsel for the respondents had submitted that there was a need to prevent the misuse of PMSSS at the hands of the institutions as well and, therefore, the insistence on participation of candidates in the process of counselling. In CWP-16011-2019, there is no denial of the specific averment of the petitioners that they had come present to attend the counselling but they are not permitted to do so. It is mentioned in communication dated 05.01.2018 (Annexure P16) in the said writ petition that ten of the students remained absent but again there is no specific denial of the averments in the writ petition. Claim of another ten of the students has been denied on the ground that they were not up to the rank of 3703, therefore, they were not even considered. Five of the petitioners (petitioners No. 4, 5, 6, 7 and 15) were allotted colleges but they failed to submit their DBT applications on the portal duly verified by the allotted college authorities. Said petitioners had

taken admission in a college other than those allotted therefore their details could not be uploaded. Filing of CWP-10799-2017 by the said respondent and the order dated 27.11.2018 passed therein is a matter of record. 2017-18 scheme does not provide any specific mechanism for change of the institute as may be allotted to the candidate. There is a specific provision for affording scholarship to even those students who are desirous of taking admission on their own in colleges, which are outside the prescribed list of colleges, though it is proved that the said institutions should be Centrally or State funded institutions, where admissions are made only after qualifying the entrance examination conducted by the Central/State government and that the said candidates should have applied online and the documents verified by the government of Jammu and Kashmir. The said students are also required to attend counselling and mark their attendance.

Learned counsel for the respondents had pointed out to minutes of 20th of Inter-Ministerial Committee to point out that from academic year 2017-18, only those students would be considered eligible, who had taken admission to the allotted institutions and that students, who wished to change their college would be required to submit their request for change through AICTE.

A perusal of the said Minutes of meeting reveal that anxiety is to increase coverage of the Scheme and to ensure that the target group receives the benefit under the Scheme. It is specifically mentioned in the said minutes that the students, who wished to change the allotted colleges would be required to submit their request for change through AICTE. However, it is noticed that an obstinate stand has been taken by AICTE that no change in the allotted institution is permissible and that a candidate cannot seek admissions on their own in a college of their choice. There is no plausible explanation set forth for rejection of request for change of institution by some of the petitioners.

Petitioners in CWP No. 29392-2019 have taken a specific stand that there were disturbed conditions in the Jammu and Kashmir at the relevant time and they could not attend the counselling due to this reason as well. Reference has also been made to the order of the Hon'ble Supreme court where cut-off date for admissions has been extended from 15.08.2017 to 30.09.2017 on an application moved by the State of Jammu and Kashmir. There is no denial of the same. It is only mentioned that the said order is not sufficient to afford any benefit to the petitioners.

Consideration of the entire facts and circumstances reveal that petitioners have been denied the benefit of PMSSS primarily on the ground that either they have not attended the counselling or they have taken admission on their own in the institutions despite allotment to other colleges or otherwise. Institution where admission is taken is affirmed to be in the prescribed list under the Scheme. Availability of the scholarships, as stated in the foregoing paras, was affirmed and verified by learned counsel for the respondent – AICTE.

While terming relief to the candidates, a one time measure, High Court of Jammu and Kashmir in order dated 07.06.2017 has rightly observed that implementation of scholarship has to be pragmatic and result oriented. Laudable object sought to be achieved by the Scheme should not be scuttled by an inflexible and rigid approach. Regulations have been put in place to prevent misuse and squandering but not to defeat the purpose of the Scheme. At this stage, it is useful to refer the judgment of the Hon'ble Supreme Court in **Senior Divisional Commercial Manager, South Central Railways and others versus S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and another (2016) 3 Supreme Court Cases 582**. The Hon'ble Supreme Court in the said case was dealing with renewal of licences of the license holders running small canteens, fruit/juice stalls under the railways prior to 2010. Reference was made to Article

38 of the Constitution of India, a directive principle of State policy which reads as under:-

“38. State to secure a social order for the promotion of welfare of the people.— (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.”

Hon’ble Supreme Court held that it is the duty of every welfare State to generate employment and to ensure that none in a vulnerable position is exploited. Reference was made to its earlier decision in **Sadhuram Bansal versus Pullin Behari Sarkar (1984) 3 SCC 410** wherein it is observed that:

“ There is no ritualistic formula or any magical charm in the concept of social justice. All that it means is that as between two parties if a deal is made with one party without serious detriment to the other, then the Court would lean in favour of the weaker section of the society, Social justice is the recognition of greater good to larger number without deprivation of accrued legal rights of anybody. If such a thing can be done then indeed social justice must prevail over any technical rule. It is in response to the felt necessities of time and situation in order to do greater good to a larger number even though it might detract from some technical rule in favour of a party.”

Trite to say that regulations which are put in place are not to be ignored and benefit under the Scheme has to be afforded, keeping in view the specific provisions put in place, but at the same time adoption of a rigid, obstinate and tunnel vision which merely leads to scuttling of the very purpose for which the Scheme is formulated is not justified. It is the duty of the respondents to ensure

percolation of the benefit to the targeted group. In the facts and circumstances of the present case, ends of justice shall be met by reconsideration of the petitioners' cases by the authorities, especially keeping in view the following:-

- (i) All the petitioners admittedly fulfil all the prescribed eligibility conditions, including that of financial criterion.
- (ii) Petitioners have not incurred any of the disqualifications mentioned in the Scheme.
- (iii) All petitioners were duly registered and are reflected in the merit list prepared.
- (iv) Both the Schemes specifically provide for admission by the students on their own, provided the Institute is in the prescribed list, recognised by AICTE etc.
- (v) Institute where petitioners have taken admission is duly recognised by AICTE, is in the prescribed list under the Scheme and the seats occupied by the petitioners in said Institute are not beyond the sanctioned limit.
- (vi) There is no allegation of any misuse or squandering by any quarter.
- (vii) Scholarships for the relevant years are admittedly available and do not stand exhausted.
- (viii) Disturbed conditions as pleaded in respect to academic session 2017-2018 are not specifically denied.
- (ix) Factum of petitioners in CWP-16011-2019 having completed their course successfully and those in CWP-27574-2019 and CWP-29392-2019 completing their course except the penultimate semester (which they are pursuing) without any break is admitted.

Thus, competent authority is directed to reconsider the grant of scholarship to the petitioners, keeping in view the aforesaid factors and take necessary action. In case, any other additional documents(s) are required of the petitioners, intimation thereof be given to them within two weeks of receipt of certified copy of this order. Said documents be submitted by the petitioners within two weeks thereafter and final decision after reconsideration of the petitioners' cases be taken within four weeks and necessary action be taken thereafter.

All the abovesaid three writ petitions are, accordingly, disposed of.

April 08, 2021
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No