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

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Date of Decision: 17.02.2021

+ W.P. (C) 5987/2020 and CM No. 21645/2020

DR. RUCHITA GHILORIA & ORS. Petitioners
Through Mr. Shakti Narayanan, Advocate
versus
MEDICAL SUPERINTENDENT & ORS. Respondents
Through Ms. Avnish Ahlawat (Standing
Counsel GNCTD Services) with Mr. N.K. Singh
and Ms. Palak Rohmetra, Advocates for GNCTD.
Mr. Kirtiman Singh, Mr. Waise Ali Noor,
Mr. Rohan Anand and Mr. Taha Yasin, Advs.
Advocates for NBE

+ W.P. (C) 6528/2020 and CM No. 22852/2020

NEHA GHILORIA Petitioner
Through Mr. Shakti Narayanan, Advocate
versus
MEDICAL DIRECTOR & ORS. Respondents
Through Ms. Avnish Ahlawat (Standing
Counsel GNCTD Services) with Mr. N.K. Singh
and Ms. Palak Rohmetra, Advocates for GNCTD.
Mr. Kirtiman Singh, Mr. Waise Ali Noor,
Mr. Rohan Anand and Mr. Taha Yasin, Advs.
Advocates for NBE

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

This hearing is conducted through video-conferencing.

1. Learned counsel for Govt. of NCT of Delhi states that an identical

matter being WP(C) 499/2020 titled as “*Dr. Rohit Kumar vs. Lt. Governor of Delhi & Ors.*” has been dismissed by a Coordinate Bench of this court on 02.02.2021 against which an LPA was filed before the Division Bench. It is submitted that the Division Bench has reserved order in the said LPA.

2. Mr. Kirti Man Singh, learned counsel appearing for the respondent NBE has pointed out that at this stage, in any case the petitioners cannot be allowed to join the medical colleges as the time to join has lapsed.

3. At this stage, it was put to learned counsel for the petitioners that it would be appropriate for this court to await the judgment of the Division Bench. However, learned counsel for the petitioner emphatically and loudly urged that this court must pass judgment this way or that way today itself. Due to the loud insistence of the learned counsel for the petitioners, I proceed to decide the present petitions.

4. I may note that on 14.10.2020 this court had passed a detailed order in W.P. (C) 5987/2020 which contains the entire factual and legal narration of background facts and issues of the present cases. For the sake of convenience, I may refer to the said order. The same reads as follows:-

“This hearing is conducted through video conferencing.

1. This writ petition is filed by the petitioners seeking a direction to senior director of respondent No.2 to reserve the allotted seats of petitioners No.1 to 3 and also to direct respondent No.1 to give relieving certificate and study leave to petitioners No.1 to 3 to join the sponsored seats.

2. Essentially the dispute is that the petitioners pursuant to the National Eligibility Cum Entrance Test-PG 2020 (NEET PG 2020) have been selected for sponsored DNB seats (Post MBBS and Post Diploma). However, respondent No.1, namely, Aruna Asaf Ali Govt. Hospital and respondent No.3, namely, Govt. of NCT of Delhi are not releasing the petitioners to join the seats

for which they have been selected.

3. The case of the petitioners is that they have appeared in the said exam in November/December, 2019. The result of the exam was declared on 31.01.2020. The petitioners secured high ranks. The candidates who fulfil the eligibility criteria were to submit an undertaking and an NOC from their present employer to respondent No.2 latest by 30.06.2020. Petitioners No.1 to 3 were working as medical officer on regular basis in Aruna Asaf Ali Hospital/respondent No.1. They asked their department to provide the NOC and undertaking in the prescribed format of respondent No.2. The last date for submitting the said NOC and undertaking was extended to 10.07.2020. On 08.07.2020 petitioners No.1 to 3 received the NOC and undertaking as per prescribed format and filed the same on 09.07.2020.

4. On 24.08.2020 petitioner No.1 was selected for the said sponsored seat and was allotted sponsored DNB(Post MBBS) General Medical (Broad Speciality) at Deen Dayal Upadhyaya Hospital; petitioner No.2 was allotted Orthopedic Surgery Seat in Saifee Hospital Mumbai and petitioner No.3 was allotted General Medicine seat at Northern Railway Central Hospital, Delhi. Respondent No.2 had asked the petitioners to physically join their allotted seats on 31.08.2020. The aforesaid time period has now been extended upto 15.10.2020.

5. The petitioners thereafter applied for grant of study leave and also requested for relieving order for joining their respective courses. It is the case of the petitioners that the allotted sponsored seat is an enhancement in the technical skill of the petitioners and it would enhance their knowledge and after this course they can serve the institution in question much better. However, respondents No.1 and 3 have failed to relieve the petitioners and hence, the present writ petition.

6. Respondents No.1 and 3 have filed a counter affidavit. The counter affidavit puts forth legal and technical arguments to claim that entitlement for study leave is not a matter of right. Reliance is placed on Central civil Services (Leave) Rules, 1972. It is also urged that the study leave can only be granted to a Government servant with due regards to exigencies of public services. It is also stated that in the present circumstances due to

the Covid19 pandemic spreading throughout the country, the only exigencies in public service would be to serve the Covid-19 patients. Hence, it is stated that LG, Delhi has taken a considered view that in these times of pandemic Covid-19, more medical staff is required in the field. Some of the doctors have already proceeded on study leave and it would not be prudent to spare more doctors. Hence, it is stated that LG has desired that respondent No.1 may not sanction any more study leave application in view of the requirement of medical staffs for Covid-19. Respondents No.1 and 3 also seek to place reliance on the judgment of the Supreme Court in the case of *State of Punjab & Ors. v. Dr.Sanjay Kumar Bansal*, (2009) 15 SCC 168.

7. In my opinion, the stand of respondents No.1 and 3 is quite unfortunate. I make this observation keeping in view the facts of this case.

It may be noted that the petitioners appeared for the NEET PG- 2020 exam in November-December, 2019. On 16.05.2020 respondents No.1 and 3 granted ex post facto NOC to the petitioners for appearing in the said NEET PG 2020 exam. The said NOC dated 16.05.2020 reads as follows:

“NO OBJECT CERTIFICATE

Principal Secretary (Health and Family Welfare) has conveyed the Ex.post facto approval to Dr.Krushit Patel, Medical Officer for appearing in NEET Post Graduate Medical Examination 2020, which was held on 05.01.2020.

It is pertinent to mention here that the request for grant of Study Leave/EOL (Study Purpose) in r/o above mentioned officer will be processed only after their selection in NEET-PG2020 and subject to vigilance Clearance.”

8. On 10.06.2020, a notification was issued by respondent No.2 for centralised merit based counselling for admission to the sponsored DNB seats. The petitioners requested respondent

No.1 to provide the necessary NOC in the prescribed format of respondent No.2 so as to enable them to participate in the counselling in question. On 08.07.2020, respondents No.1 and 3 granted the NOC to the petitioners. The said NOC reads as follows:

“No Objection Certificate

It is hereby confirmed that DR.RUCHITA GHILORIA is working on a regular basis in the department of ARUNA ASAF ALI GOVT. HOSPITAL, 5-Rajpur road, Delhi-54 (Full Office address) under Ministry of HEALTH AND FAMILY WELFARE in the State of DELHI, which is a Government (State) Organisation.

No Objection Certificate to participate in the counselling for Sponsored DNB (Post MBBS and Post Diploma) seats has been issued her by the present organisation. The undersigned is fully aware that she will be relieved from her parent office to join DNB training in case of her selection for DNB training. She continues to get the salary from the parent department (Sponsoring Government organisation) for the entire period of DNB training.

It is further certified that she shall be paid the due salary and necessary allowances as per rules, from Sponsoring Government organisation, for the entire period of DNB training.” (emphasis added)

9. What follows is that on two different occasions, respondents No.1 and 3 have granted NOC to the petitioners, namely on 16.05.2020 and again on 08.07.2020 for their pursuit of higher studies. These NOCs were given to enable the petitioners to participate in NEET PG -2020 and to also thereafter to participate in the counselling. The petitioners have been selected to the said seats on the strength of these two NOCs issued by respondents No.1 and 3. To now block the leave of the petitioners is a very unfair stand taken by respondents No.1 and 3. I reach this conclusion for the

following salient reasons:

(i) The NOC dated 08.07.2020, which is on a standard format issued by respondent No.3 clearly states that the “signatory to the NOC is aware that the petitioners will be relieved from her parent office in case of her selection for the DNB training.” Respondents No.1 and 3 now seek to do a u-turn and seeks to wriggle out of their own undertaking given in the NOC.

(ii) Further the act of respondents No.1 and 3 to deny the petitioners leave on the ground of the present pandemic/Covid-19 situation is a surprising stand. Respondents No.1 and 3 themselves have given an NOC on 16.05.2020 and again on 08.07.2020 when the pandemic was very much in existence. There is no major change in the situation of the pandemic since May/July, 2020.

(iii) I cannot help noticing that the stand of respondents No.1 and 3 is also harsh on the petitioners. They have worked hard and appeared in the NEET PG 2020 exam and cleared the said exam after ex post facto permission from respondents No.1 and 3. They have participated in the counselling after permission from respondents No.1 and 3 and secured seats. All the hard work put in by the petitioners in the hope and zeal of improving their qualification /skill have been put to naught on account of the act of respondents No.1 and 3.

(iv) I also cannot help noticing that the selection process for DNB seats(Post MBBS and Post Diploma) is over. The last date for joining is 15.10.2020. In case, for some reasons, the petitioners are not relieved, the seats which are kept for them would go waste as no other candidate can be permitted to join after counselling is over.

10. Keeping in view the above facts and circumstances, it would be in the interest of justice that respondents No.1 and 3 may reconsider the matter. The concerned authority from of respondents No.1 and 3 is requested to reconsider the matter in the light of the above noted facts and circumstances. A reasoned order may thereafter be passed by the concerned functionary. As time is short, the concerned functionary is requested to deal with the said issue within one week from today.”

5. In response to the above directions of this court, respondent No.1/Govt. of NCT of Delhi filed an additional affidavit dated 23.11.2020 in W.P.(C) 5987/2020. In the said affidavit, it has been stated that in larger public interest and as recommended by the Health Department, study leave to the mentioned doctors cannot be granted. It is stressed that the present situation is an emergent war like situation and study leave is not a matter of right. The competent authority as per CCS(Leave) Rules and the judgment of the Supreme Court in the matter of *State of Punjab & Ors. vs. Dr.Sanjay Kumar Bansal*, (2009) 15 SCC 168 can cancel or refuse study leave in larger public interest even after grant of NOC for appearing in the entrance exam.

6. Arguments were heard and judgment was reserved on 24.11.2020. To clarify certain aspects, the matter was listed for directions on 12.02.2021 before this court. On that date, learned counsel for respondent No.1 brought to the attention of this court an order dated 02.02.2021 passed in WP(C) No.499/2021 in the case of ***Dr. Rohit Kumar vs. Lt. Governor of Delhi & Ors.***, where it is pleaded that under similar facts and circumstances, the Coordinate Bench has dismissed the writ petition. Learned counsel also pointed out that against the said order dated 02.02.2021 an appeal has been filed before the Division Bench which was listed on that date i.e. 12.02.2021.

7. Today, I am informed that the Division Bench has reserved judgment in the appeal filed against the said order dated 02.02.2021.

8. A perusal of the said judgment of the 02.02.2021 in the case of ***Dr.Rohit Kumar vs. Lt. Governor of Delhi & Ors.(supra)*** shows that the facts are virtually identical to the facts of the present case. That was also a

case where the petitioner had sought study leave to enable him to pursue MD/MS Course in Pediatrics from PGI, Chandigarh. The petitioner therein had applied for admission after taking requisite permission from respondent No.2 therein. DDU Hospital where the petitioner therein was working had issued the required certificate and an NOC to the petitioner. That was also a case where the seat in question was a sponsored seat. In those facts, the Coordinate Bench of this court held as follows:-

“10. Having heard the learned counsel for the parties and perused the record, it is a fact that the petitioner while applying for the course in question, had taken the concurrence of the Authorities in the hospital. It is admitted by Ms. Luthra that the grant of study leave is not by the hospital authorities but by the Lt. Governor. No doubt, that as late as October 14, 2020, the respondent had granted permission to the petitioner to sit in INICET-2020 examination. There is also no dispute that the petitioner had cleared the said examination with a good rank. He is also a sponsored candidate from the respondent No.2 and the hospital where the petitioner is working, has also clearly expressed itself that it shall not require any substitute in place of the petitioner. But the fact remains that the decision has been taken by the Competent Authority i.e. Lt. Governor, Govt. of NCT of Delhi based on the prevailing COVID19 situation in the City that no study leave must be granted. No doubt, the initial order was passed by the Lt. Governor in July, 2020 and thereafter also in certain cases, the study leave has been granted but the fact remains that after October 22, 2020 when the order, which has been reproduced above was passed, no permission has been granted regarding study leave to the Doctors in the Govt. of NCT of Delhi because of the prevailing COVID-19 situation. In fact, I find that the case of the petitioner has been considered by the Competent Authority i.e. Lt. Governor as recently as January 19, 2021 and it was decided, based on the decision dated October 22, 2020, the request of the petitioner cannot be acceded to.

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12. From the above, it is clear that the Courts, in exercise of its power of judicial review, cannot sit as an Appellate Authority over the decision taken by the administration / management. Suffice would it be to state, that the decision has been taken, giving due regard to the exigencies, which may arise in the course of administration. I am conscious of the fact that the petitioner being a meritorious candidate, has a legitimate expectation to acquire a higher qualification and advance in his career but at the same time, as an employee working in the Govt. of NCT of Delhi, is bound by the Rules framed by the Government i.e. Rule 50 of the Leave Rules clearly stipulates that the grant of study leave is not a matter of right, as the same shall be granted to the government servant with due regard to the exigencies of public service.”

9. It is settled legal position that this court is bound by the judgment of a Coordinate Bench. This court is hence bound by the above judgment [Re.: *Sant Lal Gupta & Ors. vs. Modern Corporative Group Housing Society Ltd. & Ors.*, (2010) 13 SCC 336].

10. I may also note that learned counsel appearing for NBE/respondent No.2 Mr.Kirtiman Singh has stressed that *dehors* the above issue, the last date for joining the medical course has expired. He states that the last date for joining was 30.09.2020 which was extended up to 15.10.2020 by NBE vide notification dated 30.09.2020. The said date having expired, no student can be granted admission to a Post-Graduate Medical College as is now being sought.

11. The Division Bench of this court in ***Dr.Akshee Batra vs Union of India & Ors.*** (LPA No. 268/2020 dated 13.10.2020) on this aspect held as

follows:-

“15. In fact, even when seats remain vacant, as contended by the appellant in the present case, the Supreme Court has made it clear that extension of time cannot be granted to permit candidates to join. The following observations in *Education Promotion Society for India & Anr. vs. Union of India & Ors. (2019) 7 SCC 38* clarify this position beyond controversy:-

6. In this case the petitioners want a general extension of time not on account of any particular difficulty faced by any individual college or university but generally on the ground that a large number of seats for the PG courses are lying vacant. It is stated that more than 1000 seats are lying vacant. In the affidavit filed by the UoI it is mentioned that as far as deemed universities are concerned there are 603 seats lying vacant. However, it is important to note that out of 603 seats lying vacant only 31 are in clinical subjects and the vast majority (572) that is almost 95% of the seats are lying vacant in non-clinical subjects. There is no material on record to show as to what is the situation with regard to the remaining 400- 500 seats. This Court however can take judicial notice of the fact that every year large number of non-clinical seats remain vacant because many graduate doctors do not want to do postgraduation in non-clinical subjects. Merely because the seats are lying vacant, in our view, is not a ground to grant extension of time and grant further opportunity to fill up vacant seats. The schedule must be followed. If we permit violation of schedule and grant extension, we shall be opening a pandora's box and the whole purpose of fixing a time schedule and laying down a regime which strictly adheres to time schedule will be defeated.

7. We may note that in the schedule prescribed, there are three rounds of counselling, the first round, the second round and the mop-up round. The mop-up round was to be completed by 31-5-2019 and if some seats remain vacant even after the mop-up round it cannot be helped. Extension

cannot be granted just because some seats are lying vacant without there being any other justification.. (emphasis supplied)”

12. The last date for taking admission has lapsed. Hence, even otherwise, it is not possible to grant any relief to the petitioners.

13. The writ petitions are accordingly dismissed. Pending applications, if any, also stand dismissed.

FEBRUARY 17, 2021
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JAYANT NATH, J

