



W.A.No.1711 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.10.2022

Delivered on: 18.11.2022

CORAM

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.A.No.1711 of 2022

Dr.S.Gunasekaran

...

Appellant

Vs.

1.The Under Secretary to Government,
Ministry of Health and Family Welfare,
Government of India,
Nirman Bhawan, New Delhi.

2.The Director General of Health Service,
Ministry of Health and Family Welfare,
Government of India, Nirman Bhavan,
New Delhi.

3.The Medical Counselling committee (MCC),
The Director General of Health Service,
Ministry of Health and Family Welfare,
Government of India, Nirman Bhavan,
New Delhi.

4.The Registrar,
Christian Medical College (CMC),
Vellore, Tamil Nadu – 632 004.

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Respondents



W.A.No.1711 of 2022

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 15.07.2022 in W.P.No.13978 of 2022.

For Appellant : Mr.AR.L.Sundaresan,
for Mr.C.Santhoshkumar

For Respondents : Mr.Krishna Srinivasan,
for M/s.S.Ramasubramaniam & Asscts.
For R4

M/s.A.Anuradha,
Central Government Standing Counsel
for R1 to R3

JUDGMENT

D.KRISHNAKUMAR, J.

The appellant is the writ petitioner in W.P.No.13978 of 2022 and aggrieved by the dismissal of the writ petition which was filed for a direction to the respondents to declare the MD, Endocrinology in the fourth respondent institution as a vacant seat in pursuant to forfeit made by the appellant / petitioner by email communication dated 26.04.2022 and to return back all the original certificates without insisting for the penalty charges and to refund the fee paid by him , has filed the present writ appeal.



W.A.No.1711 of 2022

2. The appellant/writ petitioner has completed MBBS Course in the year 2017 and he appeared for the NEET PG Super Specialty Examination in the year 2021. The third respondent published the counselling scheme of All India Quota for NEET – Super Specialty (DM/MCh. And DNBSS). The appellant was allotted M.D. (Endocrinology) seat in the first round of counselling in the fourth respondent institution / Christian Medical College (CMC), Vellore and he paid the prescribed fee through online and submitted the original certificates and also executed a bond in favour of the fourth respondent institution. The appellant gave his consent to participate in the second round of counselling for any upgradation of seats.

3. According to the appellant, he resigned his seat in M.D. (Endocrinology) with the fourth respondent institution through e-mail dated 26.04.2022, intimating about his resignation so that the said seat can be considered as a vacant seat and an eligible candidate could be filled in, either in the second round of counselling or during the Mop-Up counselling. The second round of counselling results were scheduled to be declared on 26.04.2022. According to the petitioner, having tendered his resignation



W.A.No.1711 of 2022

before the declaration of the results for the second round of counselling, he cannot be made liable to compensate the fourth respondent institution, as the resigned seat could have been filled up in the Mop-Up round of counselling, which was scheduled after the second round of counselling.

4. According to the appellant, when he applied for NEET counselling, in the website Question 37(c) i.e., “Who are eligible for “Exit with Forfeiture” option, the Answer (C) is Round I candidate who has not been upgraded in Round II may resign his seat allotted in Round I, within two days of Round -2 results announcement. The appellant claims that based on the aforesaid answer given to Question 37, the appellant has resigned the seat even before declaration of the results for second round of counselling and therefore, he cannot be made liable under the Bond executed in favour of the fourth respondent institution /CMC, as his resigned seat could not have been filled during the MOP-Up round of counselling. According to the appellant, changes were made between the first round of counselling and the second round of counselling and Question No.37(C) extracted supra was removed without any notice to the candidates. The appellant claims that he



W.A.No.1711 of 2022

got an opportunity to participate in the entrance examination for PG Super Specialty Course in AIIMS, which is scheduled to be held on 10.06.2022 and since his original certificates are with the fourth respondent, he is unable to participate in the above mentioned entrance examination and therefore, the appellant/writ petitioner has filed the writ petition.

5. The second respondent has filed a counter affidavit stating that when the Super Speciality Counselling 2021 Website was under reconstruction work, earlier Question No.37 and the answer relied upon by the appellant / writ petitioner was visible, but it was later corrected by the respondent on 20.04.2022 i.e., before commencement of second round of counselling, when the same was also notified. Therefore, according to the respondents, the Counselling Scheme as notified on 20.04.2022 alone is applicable to the appellant.

6. Question Nos.37 and 38 and its answer as per the Counselling Scheme notified on 20.04.2022 reads as follows:



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W.A.No.1711 of 2022

“Q No.37: Who are eligible for “Exit with Forfeiture” option?

Ans: (a) Candidate who has allotted a seat in Round-1 but does not report at the college may exit with Forfeiture. (i.e. The refundable security fee will not be refunded in such a case)

b. Candidate who has been allotted a seat in Round-2 but does not report at the college may exit with forfeiture. (i.e. The refundable security fee will not be refunded in such a case)”

Q.No.38 : Can a candidate resign from Round –II once he joins the allotted college?

Ans: No.”

7. According to the respondents, Question Nos.37 and 38 have to be read conjointly and it is clear from a conjoint reading that a candidate cannot resign from second round of counselling, once he has joined the allotted college. According to the respondents, the appellant / writ petitioner has joined the fourth respondent college as per allotment and the second respondent also stated that the appellant has reported before the allotted college and have joined it. According to the respondents, till 30.04.2022, no communication was received by them with regard to the resignation from the seat by the appellant.



W.A.No.1711 of 2022

8. According to the respondents, since no option of online resignation is given in Super Speciality Counselling as per the software through which the counselling is conducted, the seat resigned by the appellant/writ petitioner cannot be carried forward to the Mop-Up round. The execution or imposition of bond service / stipend is not within the jurisdiction of the respondents and the same has also been mentioned in the information bulletin published in the official website of MCC, DGHS and according to the respondents, the appellant is not entitled for refund of the fees already paid and thereby, prayed for the dismissal of the writ petition.

9. The learned Judge, taking into consideration the factual aspects, rival submissions and by relying upon the decision of the Hon'ble Supreme Court in ***Dr.Astha Goel and Others v. Medical Counselling Committee and Others***[2022 SCC Online SC 735], wherein it was held that stray round of counselling to fill up vacant seats is impermissible, had ultimately dismissed the writ petition. Aggrieved by the dismissal of the writ petition, the appellant/writ petition has filed the present writ appeal.



W.A.No.1711 of 2022

10. Mr.AR.L.Sundaresan, learned Senior Counsel for the appellant contended that once a notification is issued, it cannot be changed in the midstream of the selection process, however the respondents have changed the Super Speciality Counselling Scheme published on 3rd April, 2022 by removing point “C” in Question No.37 after the first round of counselling, before the second counselling and the appellant had intimated about his resignation immediately on 26.04.2022 through e-mail to the fourth respondent institution so that the seat can be considered as a vacant seat thereby enabling the third respondent to carry forward the vacant seat of the appellant to Mop-Up counselling, but the learned Judge has erred in holding that the appellant submitted his resignation after the deadline fixed in the counselling scheme and therefore, prays for interference.

11. Heard Ms.A.Anuradha, learned Central Government Standing Counsel for the respondents 1 to 3, Mr.Krishna Srinivasan, learned Standing Counsel for the fourth respondent and also perused the entire materials available on record.



W.A.No.1711 of 2022

12. The point for consideration is whether the appellant is entitled for return of the original certificates by declaring the seat allotted to him in the fourth respondent institution as vacant?

13. Let this Court shall consider Clause 37(c) of the Counselling Scheme of All India Quota for NEET – Super Speciality, which reads as under:

“Q.No.37. Who are eligible for “Exit with Forfeiture” option?

Ans.(c) Round 1 candidate who has not been upgraded in Round II may resign his seat allotted in Round -1 within two days of Round -2 results announcement.”

According to the appellant, he appeared for the first round of counselling and provisional allotment letter dated 08.04.2022 was issued to the appellant for allotment of DM Endocrinology seat in the fourth respondent institution. The appellant has also executed a “Bond for profession service after completion of course and penalty for discontinuation of course” in



W.A.No.1711 of 2022

favour of the fourth respondent institution by accepting the terms and conditions of the Super Specialty Course. In the meantime, the respondents 1 to 3 have changed the counselling scheme in Question No.37, in which Question No.37 (C) was deleted. The appellant, who was admitted to second round of counselling, has submitted his resignation on 26.04.2022 and according to the appellant, he applied for information under RTI Act and received the information on 17.05.2022 stating that due to some technical fault, on the website of MCC the new information bulletin was available on one link of the website and in another link, the last year's bulletin continued to be present leading to some confusion and Q.No.38 clearly specified that there is no resignation in SS courses counselling and accordingly, the online resignation module was never opened for SS counselling.

14. It is the case of the appellant that due to technical fault, the aforesaid link containing Question No.37, Ans (c) was missing from the website, but in another link the last years bulletin continued to be present leading to some confusion. However, this Court is of the view that the said



W.A.No.1711 of 2022

mistake would not give any leverage for the appellant seeking to declare the seat as a vacant seat.

15. The appellant has also sent a communication dated 26.04.2022 to the fourth respondent institution to accept the resignation and to fill up the vacant seat in the Mop-Up counselling. It is the stand of the respondents that the time schedule for conducting Mop-Up counselling has already been over and the said seat could not be filled up and therefore, the said seat remained as vacant. It is contended by the respondents that Super Specialty Course is a valuable one and the resignation of seat by the appellant would not only cause loss to the institution, but also would deprive the opportunity of getting the said seat by many aspirants to the said course.

16. A categorical stand has been taken by the respondents by relying upon Q.Nos.37 and 38 and the corresponding answers of the counselling scheme that once a candidate resigns, his seat after second round counselling, the said resigned seats cannot be filled up later, as it has become a waste, since the deadline fixed for filling up those resigned seats



W.A.No.1711 of 2022

had already come to an end.

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17. It is specifically contended by the respondents that the appellant, having opted for participating in the second round of counselling for upgradation, cannot turn around and submit his resignation of the seat by saying that he had submitted his resignation through online in the link for the previous counselling for the year 2020, which was visible in the website. The information obtained by the appellant under RTI Act also disclosed that due to some technical fault, the link for the current year bulletin as well as the last year were simultaneously displayed in the website, leading to confusion and however, clarified that as per Q.No.38, there is no resignation of SS courses counselling is permissible. In the light of the clear specific stand by the respondents, the appellant cannot seek any benefit under Q.No.37(c) of the SS Counselling Scheme and therefore, the contention of the appellant by placing reliance upon Q.No.37(c) of the SS Counselling Scheme is totally unsustainable.

18. The appellant, being a qualified person, having read the terms and



W.A.No.1711 of 2022

conditions of the information bullet in and successful in the first round of counselling and having executed a bond with the fourth respondent institution, now finding fault with the respondents for not filling up his resigned seat in Mop-Up Counselling, is totally untenable and the appellant cannot claim such a relief as a matter of right. According to the appellant / writ petitioner, he has also submitted online application dated 16.05.2022 in All India Medical Services for participating in the counselling for joining Medical Oncology, which is scheduled to be held on 10.06.2022, for which his original certificates are very much necessary.

19. Though the contention of the appellant that he has intimated his resignation as contemplated under the Counselling Scheme without any default well before the results were declared for the second round of counselling and therefore, his seat ought to have been declared as a vacant seat, it is the stand of the second respondent in the counter affidavit that they have not received any e-mail communication prior to 30.04.2022 and further, there is no option of online resignation is given in Super Specialty Counselling and as per the software through which the counselling is



W.A.No.1711 of 2022

conducted, the questioned seat is at present being held by the appellant/writ petitioner and therefore, the said seat cannot be carry forwarded to Mop-Up round counselling and the same would be detrimental to be interest of the candidates who have participated in Round 1 and 2 as they are debarred from participating in Mop-Up round.

20. The learned Judge has considered the decision of the Hon'ble Supreme Court in *Dr.Astha Goel and Others v. Medical Counselling Committee and Others [2022 SCC Online SC 735]*, wherein it was held that stray round of counselling to fill up vacant seats is impermissible and also the decision in *Education Promotion Society for India and Another v. Union of India and Others [(2019) 7 SCC 38]*, wherein it was held that strict adherence to time schedule for admission to Post Graduate Medical Courses is imperative and extension of the time schedule is impermissible and rightly held in para 24 that the appellant/writ petitioner has submitted his resignation after the deadline fixed in the counselling scheme and he cannot find fault with the respondents for not filling up his resigned seat, as the respondents have only adhered to the time schedule which has to be



W.A.No.1711 of 2022

strictly followed as held by the Hon'ble Supreme Court and being Super Specialty medical education seats, where highest standards are to be maintained, the request of the appellant /writ petitioner cannot be considered at this stage and finds no merit in the writ petitioner/appellant. This Court also finds no reason to interfere with the views/findings given by the learned Single Judge.

21. In the light of the aforesaid discussion and taking note of the fact that as per Clause 9 of the bond executed by the appellant/writ petitioner with the fourth respondent institution, for discontinuation of the course after joining, resulting in lapse of the seat and also will result in a penalty of Rs.30 lakhs plus reimbursement of cost to the institution, it is open to the respondents to consider the request of the appellant/writ petitioner on sympathetic grounds for refund of the fees paid as well as issuance of original certificates to the appellant.

22. In the result, the Writ Appeal Stands dismissed with the above



W.A.No.1711 of 2022

observations. No costs.

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[T.R., ACJ.,] [D.K.K., J.]
18.11.2022

Index: Yes/No

Internet: Yes/No

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WEB COPY



W.A.No.1711 of 2022

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Jvm

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W.A.No.1711 of 2022

18.11.2022