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

Date of Decision: 24th March, 2022

+ **LPA 44/2022 & CM No.3963/2022**

RADHIKA ASHAR & ORS. Appellants
Through Mr.Manoj Khanna, Ms.Aakriti
Mittal, Advs.
versus

UNION OF INDIA & ORS. Respondents
Through Mr.Apoorv Kurup, CGSC with
Ms.Nidhi Mittal, Mr.Ojaswa
Pathak, Advs. for R-1 & 2.
Mr.Sanjay Khanna &
Ms.Pragya Bhushan, Advs. for
R-3.
Ms.Archana Pathak Dave,
Mr.Anish Dave & Mr.Parmod
Kr.Vishnoi, Advs. for R-4.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This appeal has been filed by the appellants challenging the judgment dated 13.12.2021 passed by the learned Single Judge in WP(C) 10229 of 2021, titled ***Radhika Ashar & Ors. v. Union of India & Ors.***, holding that while the claim of the petitioners that they



be allowed to participate in the counselling process of the All India Ayush Post-graduate Entrance Test, 2021 (hereinafter referred to as the 'AIAPGET – 2021') cannot be granted as they have not completed their compulsory one-year rotating internship by 31.12.2021, however, the order will not come in the way of the Union of India taking a fresh decision in view of the revised schedule for counselling, subject to the orders of the Supreme Court in that regard.

2. It is the case of the appellants that they are the final year students of BUMS/BAMS/BSMS/BHMS course(s) in different Universities/Colleges located in the States of Kerala, Andhra Pradesh, Telangana, Gujarat, Uttarakhand, National Capital Territory of Delhi, West Bengal, Uttar Pradesh, et cetera. Due to the outbreak of the Covid-19 pandemic and the lockdown declared by the Central Government, the final-year examinations, which were originally scheduled for April 2020, were held in July 2020, and the results were announced only in December 2020. Subsequently, after the declaration of the result, the appellants joined the compulsory one-year rotating internship. Due to late declaration of result and consequent late grant of provisional certificate, which were given to the appellants only in January 2021, they could start rotating internship only in January 2021. This delay was for no fault on their part and for reasons beyond their control. Due to this delay, they shall be completing their one year rotating internship only in January 2022. The appellants submit that, therefore, the prescription of 31.12.2021, as the date by which the candidates for AIAPGET – 2021 must complete their one-year



rotating internship, is arbitrary and whimsical. They submit that as the counselling process was to start only from 17.01.2022 and was to continue till 25.03.2022, the students completing their one-year rotating internship before the end of counselling should have been allowed to participate therein.

3. On the other hand, the learned counsel for the respondents submits that 30.09.2021 was the initial cut-off date for completion of a compulsory one-year rotating internship for eligibility in appearing AIAPGET – 2021. He submits that this requirement is stipulated in Regulation 7 of the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Amendment Regulations, 2016, read along with Regulation 20 of the Indian Medicine Central Council (Post Graduate Ayurveda Education) Regulations, 2016. However, vide letter dated 23.04.2021, the respondent no.1 extended the cut-off date for completion of internship to 30.10.2021 due to the ongoing Covid-19 pandemic.

4. He submits that the initial schedule for conducting AIAPGET – 2021 was 07.06.2021, however, due to the Covid-19 pandemic, the same was postponed by a Public Notice dated 05.05.2021. Later, by a Public Notice dated 01.08.2021, a fresh schedule of examination was declared, stipulating that the online submission of the application form shall be from 01.08.2021 to 21.08.2021. It was provided that the date of examination shall be announced later.



5. By a Public Notice dated 03.08.2021, the date for conduct of the examination was declared as 18.09.2021. The examination was duly held on the said date.

6. In the meantime, vide Notice dated 16.08.2021, the respondent no. 1 further extended the cut-off date for completion of internship to 31.12.2021.

7. The appellants, who could not complete their internship by 31.12.2021, filed a Writ Petition before this Court, being WP(C) 8687 of 2021, seeking extension of the date for completion of internship to 31.01.2022.

8. This court, vide its order dated 18.08.2021 passed in the above Writ Petition, directed the respondent no.1 to consider the petitioners' request for extension.

9. The appellants filed a detailed representation before the respondent no. 1, however, the same was rejected by the respondent no. 1 vide its letter dated 27.08.2021. The same is reproduced herein below:

“ I am directed to refer to order dated 18.08.2021 passed by the Hon'ble High Court of Delhi in writ petition no. 8687/2021 and to say that as per ASU PG Regulation, 2016, the cut- off date of for admission in PG courses shall be the 30th September of each calendar year. Accordingly the internship of candidate shall be completed on or before 30th September, 2021 for eligibility for appearing in AIAPGET-2021 examination.



2. *However, considering present covid-19 situation, the Ministry had extended Cut-off date of Internship towards determination of eligibility for appearing in AIAPGET-2021 to 31st October, 2021, vide its letter dated 23.04.2021.*

3. *Further, numerous requests have been received from AIAPGET aspirants of different States, regarding extension of Cut-off date of completion of Internship towards determination of eligibility for appearing in AIAPGET-2021, as they are unable to complete internship on or before 31st October, 2021, due to the prevailing Covid-19 pandemic situation.*

4. *On examining the request, the Ministry of Ayush has further extended the cut-off date of completion of Internship towards determination of eligibility for appearing in AIAPGET-2021 to 31.12.2021 for A.Y. 2021-22 vide its letter dated 16.08.2021, which is 3 months beyond the cut-off date for admission in PG courses i.e. 30th September as per existing ASU PG Regulation, 2016.*

5. *As per ASU UG Regulation, the students who got admitted in A.Y. 2015-16, should have appeared in their Final professional examination in the month of Oct/Nov, 2019 and they supposed to have started their internship in January/February, 2020 after declaration of result of their final professional examination. Accordingly their internship supposed to be completed by January/February, 2021. (ex. Admission Year-2015, First Professional Examination- by July 2016, Second Professional Examination- by July, 2017, Third Professional Examination- by May/June, 2018, Final Professional Examination- by Oct/Nov, 2019).*

6. *The Ministry of Ayush has already considered this issue and extended the cut-off date upto 31.12.2021 & further extension of*



cut-off date of completion of internship will cause further delay in the admission and commencement of session. Further extension of cut-off date will become a never ending process as at any cut-off date some of students are found not fulfilling the criterion of Internship. It will also jeopardize the interest of many students who have completed their internship within time.

7. In view of the above, the request of Petitioners to further extend the cut-off date can't be acceded.

8. This issues with the approval of competent authority.”

10. The appellants thereafter filed a writ petition, out of which present appeal arises, again praying that they be allowed to appear in the AIAPGET – 2021 entrance examination with liberty to submit the compulsory one-year rotating internship certificate at the time of counselling.

11. The learned Single Judge, vide his interim order dated 15.09.2021, allowed the appellants to take AIAPGET – 2021 without prejudice to the rights and contentions of the parties, directing that no equity shall arise in favour of the appellants as a result thereof. The order was passed as the learned counsel for the respondents had sought time to seek instruction.

12. Pursuant to the interim order, the appellants have taken their examination and claim to have secured a high rank therein.



13. The learned counsel for the appellants submits that due to Covid-19 pandemic, the entire schedule of AIAPGET – 2021 has been disturbed. The examination, which was earlier to be conducted on 07.06.2021, was eventually conducted on 18.09.2021. He submits that the declaration of results for BUMS/BAMS/BSMS/BHMS course(s) for various States was also delayed due to the Covid-19 pandemic, resulting in a delay in the students joining the compulsory rotating internship. He submits that as the counselling was to begin only from 17.01.2022, and was to continue till 25.03.2022, there was no impediment for the respondents to allow the students, who completed their internship and are able to produce their internship completion certificates at the time of counselling, to participate in such counselling.

14. The learned counsel for the appellants further submits that the stand taken by the respondents is, in fact, resulting in 104 All India Quota Seats remaining unfilled, which cannot be countenanced.

15. On the other hand, the learned counsel for the respondents submits that the plea of the appellants has been considered by the Competent Authority and has been rejected vide letters dated 27.08.2021 and 30.09.2021. He submits that the cut-off date of 31.12.2021 was arrived at, taking into account that the entrance test was delayed by a period of three months, thereby an equivalent extension was granted for completion of the internship. He submits that grant of any relief to the petitioners would make the cut-off date totally redundant and open-handed.



16. Placing reliance on the judgment dated 27.05.2020, passed by this Court in LPA 147 of 2020, titled ***Dr. Ojasvini Agarwal v. Union of India & Ors.***; as also the Order dated 08.02.2022, passed by the Supreme Court in WP(C) 68 of 2022 in ***Shivam Satyarthee & Ors. v. Union of India & Ors.***, he submits that prescribing the cut-off date is a policy decision and cannot be interfered with by a Court exercising its power under Article 226 of the Constitution of India. He submits that just like the appellants, there may be many other students/candidates who did not take the examination knowing that the cut-off date prescribed was 31.12.2021; the appellants cannot take a march over them, merely because they have participated in the examination pursuant to an interim order passed by this Court.

17. We have considered the submissions made by the learned counsels for the respective parties.

18. From the above narration of facts, it is apparent that in terms of Regulations, 30.09.2021 is prescribed as the cut-off date for completion of the one-year compulsory internship for being able to participate in the AIAPGET. Due to the Covid-19 pandemic, the respondent no.1 itself extended the cut-off date for completion of internship for AIAPGET-2021 to 31.10.2021, and thereafter to 31.12.2021. Pursuant to the directions of this Court, the respondent no.1 has considered the representations of the appellants for further extension of the cut-off date and rejected the same vide its letters dated 27.08.2021 and 30.09.2021. The respondent no.1, having applied its mind to the representations of the appellants and rejected



the same by giving reasons, which are not found arbitrary and whimsical, this Court, in the exercise of its power under Article 226 of the Constitution of India, cannot substitute the decision of the Body charged with the function of fixing such cut-off date, and direct a modification of the cut-off date for completion of the internship.

19. It is also to be noted that there would be many students who would not have taken the AIAPGET – 2021 course knowing that the last date for completion of the internship was fixed as 31.12.2021. Granting relief to the appellants, therefore, would result in discrimination against such students. The appellants cannot take benefit of the fact that they were allowed to participate in the examination pursuant to the interim order passed by the learned Single Judge. The said interim order itself stated that the appellants shall not claim any equity on that basis.

20. As far as the plea that there are 104 All India Quota Seats available after counselling, it is for the respondent no. 1 to consider the said vacancy position and, if it so feels, pass such other orders/directions to fill such vacant seats. However, this cannot be a ground for this Court to grant relief to the appellants.

21. In view of the above, we find no merits in the present appeal and the same is dismissed. However, the dismissal of the present appeal shall not come in the way of the respondents taking a decision on the representations of the appellants on the availability of the All India Quota Seats.



22. There shall be no order as to cost.

NAVIN CHAWLA, J

VIPIN SANGHI, ACJ

MARCH 24, 2022/Arya/P

