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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 13322/2023 and CM APPL. 52581/2023**

Date of Decision: 11.10.2023

IN THE MATTER OF:

DR. (MAJ) SHIVANI DHAKA (RETD.)

W/O SH. SUMIT CHHILLAR

AGED ABOUT: 33 YEARS

R/O 1158, NEAR PDM PRIMARY SCHOOL,

SECTOR-2, BAHADURGARH,

JHAJJAR, HARYANA-124507

..... Petitioner

Through: Mr. Amit Dhaka and Mr. Manohar
Malik, Advocates

Versus

UNION OF INDIA

THROUGH SECRETARY,

MINISTRY OF DEFENCE,

SENA BHAWAN, NEW DELHI

..... Respondent No.1

DIRECTOR GENERAL

ARMED FORCES MEDICAL SERVICES,

DEFENCE OFFICERS COMPLEX,

AFRICA AVENUE, 5TH

FLOOR, A BLOCK,

NEW DELHI-110023

..... Respondent No.2

Through: Mr. Anshuman Singh Sr. Panel Counsel
alongwith Mr. Akash, G.P. and Mr. Piyush
Ahluwalia, Advocates

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By: PURUSHAINDRA
KUMAR KAURAV



HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

PURUSHAINDR KUMAR KAURAV, J. (ORAL)

1. The present petition has been filed under Article 226 of the Constitution of India seeking the following reliefs:-

“(a) Issue an appropriate writ, order or direction in the nature of certiorari, thereby quashing the impugned notification pertaining to seat matrix in respect of Priority-V candidates for the counselling process conducted by the Armed Forces Medical Services published by the Respondent No. 2 and all it's subsequent notifications and events consequential thereto or emanating therefrom;

(b) Issue an appropriate writ, order or direction in the nature of mandamus, thereby commanding and directing the Respondent No. 2 to conduct fresh round of counselling for Priority-IV candidates in accordance with the Priority and Merit cum choice as envisaged in Clause 21 of the Information Bulletin and offering the impugned seat matrix to the Petitioner in Priority - IV category before offering it to the candidates of Priority-V;

(c) Pass any such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case”.

2. Learned counsel appearing on behalf of the petitioner submits that on 11.08.2023, the petitioner participated as a candidate belonging to Priority IV category and since the seat was not allotted as per the choice of the petitioner, therefore, she did not opt for the seats offered to her. According to him, on 14.08.2023, certain seats were offered to Priority V candidates, however, ten additional seats which came to be displayed only on 04.10.2023, were not displayed by the respondent-Armed Forces Medical Services (AFMS) on earlier rounds of counselling.

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3. He, therefore, submits that had those ten additional seats been offered on 11.08.2023, the petitioner would have opted for any one of the seats as per her choice and merit. He further contends that if the seats were to be added to the concerned pool, the same should have been first offered to the higher Priority candidates and subsequently, they should have been allocated to Priority V candidates. He submits that the seats cannot be made available directly at the termination of counselling in Priority V. He, therefore, submits that the manner in which the counselling was conducted is against the letter and spirit of Article 14 of the Constitution of India and the same has resulted in depriving the petitioner from taking admission as per her merit.

4. As per the directions passed by this court, the respondents have filed the counter affidavit. It is stated in the counter affidavit that this court disposed of the writ petition being W.P.(C) 10856/2023 *vide* judgment dated 11.09.2023 by passing various directions to accommodate some of the petitioners therein. Paragraph no.59 of the judgment dated 11.09.2023 has been specifically relied upon by the respondents.

5. Learned counsel appearing on behalf of the respondents contends that in order to accommodate the petitioners who were granted relief by this court, the respondents requested National Medical Commission (NMC) for grant of accreditation of two extra seats at INHS, Asvini, to adjust the two petitioners in W.P.(C) 10856/2023 who had opted for the seats. According to him, the said request was accepted in order to ensure that there should not be any disturbance to the allotment of Priority IV candidates. Accordingly, the



re-counselling of the candidates of Priority III & IV was endeavoured to be avoided.

6. He further submits that some of the candidates approached the Hon'ble Division Bench of this Court against the judgment dated 11.09.2023. The Hon'ble Division Bench in LPA 661/2023, on 26.09.2023, permitted the appellants to participate in the counselling for the vacant seats. It was stated before the Hon'ble Division Bench that 51 seats were lying vacant which included dormant seats also. He, therefore, submits that even otherwise also, the respondent-authorities have endeavoured to comply with the directions passed by this court in W.P.(C) 10856/2023 and also in LPA 661/2023 without disturbing the entire counselling process as has also been envisioned by this court *vide* judgment dated 11.09.2023. He submits that even as per the directions of the Hon'ble Supreme Court, the last date for grant of PG seats is also expiring on 20.10.2023 and therefore, if any interference is made at this stage, the same would unsettle the entire counseling.

7. I have heard learned counsel appearing on behalf of the parties and have perused the record.

8. This court in W.P.(C) 10856/2023, on 11.09.2023, in paragraph no.59, passed the following directions:-

xxxxxxx

(i) *Two petitioners, who have opted for seats as per interim directions passed by this court, be allowed to continue their courses on their respective allotted seats as opted by them.*

(ii) *Petitioner nos.10, 13 and 15 shall be granted admission as per the priority of subjects and their merit for which the sponsoring authority*

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had issued the sponsorship certificates to them.

(iii) In case the seats are not vacant in respective courses, the required number of candidates placed at the bottom of the merit list against respective MD/MS seats will have to be ousted. The ousted candidates be offered the remaining available seats, as stated during the course of arguments by respondent no.2. If in order to work out the directions, respondent no.2 has to conduct recounselling for Priority III or IV, let the same be done immediately, as the admissions of the candidates who may likely to be ousted were already made subject to the further directions to be passed by this court. The admitted candidates are parties to this writ petition and were fully aware of the pendency of the present case.

(iv) This court has held that the petitioners have no right to seek an opportunity for rectification of their sponsorship certificate. However, considering the fact that in the previous years the respondents had permitted the candidates to rectify the deficiencies in the respective sponsorship certificates, in the peculiar facts of the present case, the remaining petitioners shall be considered for allotment of vacant seats before offering a seat to any other candidate, subject to providing seven days' time to those petitioners for obtaining a fresh sponsorship certificate from their respective departments in the prescribed format.

(v) This court is also of the view that the respondents should formulate a clear and consistent policy regarding the stage at which the sponsorship certificates are to be scrutinized and whether the candidates should be permitted to rectify their sponsorship certificate, if any technical defect is found. This would ensure uniformity, transparency and avoid unnecessary litigation. Let the respondents take a final view on the aforesaid aspect, well before the commencement of the next academic session and incorporate the same in the subsequent Information Bulletin.

(vi) Let all the steps be taken to complete the counselling and admission process within the stipulated time, as per the directions passed by the Hon'ble Supreme Court in MA 1732/2023 in WP (C) No. 76/2015 titled as 'Ashish Ranjan & Ors. vs Union Of India & Ors.'"

9. On 21.09.2023, in CM APPL. 48794/2023 filed in W.P.(C) 10856/2023, following order was passed:

"CM APPL. 48794/2023

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1. *This application was considered at the instance of three candidates who belong to Priority-III category and accordingly, the directions were given to the respondents to file their response.*

2. *Learned counsel appearing on behalf of the official respondents, while relying on the reply to the aforesaid application, explains the steps taken by the respondents, pursuant to the directions passed by this court vide judgment dated 11.09.2023.*

3. *Paragraph nos.4 to 12 of the reply filed by the respondents are reproduced as under:-*

4. It is submitted that the order of the Hon'ble High Court was processed for implementation in the O/o DGAFMS taking the following aspects under consideration:

*(a) Choice of subjects opted by the petitioner no. 10, 13 & 15 who have been granted relief by the Hon'ble High Court. A copy of the sponsorship certificates which indicates their choice of subjects is enclosed as **Annexure R-1***

*(b)List of Priority-III candidates allotted seats in the counselling held on 11 Aug 2023 including their All India rank and subject allotted. Copy attached as **Annexure R-2***

*(c)List of Priority-IV candidates allotted seats in the counselling held on 11 Aug 2023 including their All India rank and subject allotted. Copy attached as **Annexure R-3***

(d) The observation of the Hon'ble Court that:

*"in the interest of justice, **while not disturbing all the admissions already made** by respondent no.2 in Priority-III, some workable directions need to be issued in larger interest of merit."*

5.It is further submitted that as per the sponsorship certificate of petitioner no. 10, 13 & 15 of the writ petition, it is abundantly clear that they have exercised the subject of General Medicine as their top choice and as per the relief granted by the Hon'ble High Court the



said candidates are required to be offered admission in General Medicine.

6. It is also submitted that a total of 24 seats in General Medicine was offered to Priority-III candidates in the counselling held on 11 Aug 2023. A total of 22 candidates had opted for the subject of General Medicine. The last three candidates among Priority- III who had opted for General Medicine and had been allotted the said subject were:

(a) Adewar Dinesh Krishnaji (AIR 98648) allotted Gen Medicine at Command Hospital. Kolkata

(b) Raj Kumar Verma (AIR 109305) allotted Gen Medicine at INHS Asvini, Mumbai.

(c) Sunitha B (AIR 118833) allotted Gen Medicine at INHS

It is relevant to submit that the above 03 candidates were the last three in merit in Priority-III.

7. It is also submitted that the counselling for Priority-IV candidates, who are Ex Army Medical Corps Short Service Commissioned Medical Officers, was also held on 11 Aug 2023 where in a total of 65 seats in various subjects was allotted. 02 candidates out of the 65 have been allotted Gen Medicine and are:

(a) Rahul Kumar Badhala (AIR 7555) allotted Gen Medicine at INHS Asvini, Mumbai.

(b) Lomada Parmeshwar Yadav (AIR 19922) allotted Gen Medicine at INHS Asvini, Mumbai.

It is relevant to submit that the above candidates were at merit position 01 and 04 among the 65 Priority-IV candidates.

8. It is also submitted that the sponsorship certificates of the last 03 candidates in the list of candidates of



Priority-III allotted seats on 11 Aug 2023 reveals that although they have been allotted) Gen Medicine which was their top choice in the sponsorship certificate, the subjects which are their next best choices are available for allotment. Copy of the sponsorship certificates of above candidates is attached as Annexure R-4

9. It is further submitted that Hon'ble CAT Ernakulum in OA 353/2023 vide order dated 22 Aug 2023 has also directed to maintain status quo till next date of hearing of the matter which was on 18 Sep 2023. In light of the above facts, the letter dated 13 Sep 2023 (Impugned Letter) was issued to all the affected candidates. It is also submitted that the matter has been finally heard by CAT Ernakulum and judgement has been reserved. The Hon'ble Tribunal has directed status quo till the pronouncement of judgement. Copy of the Hon'ble CAT Ernakulum order dated 22 Aug 2023 and 18 Sep 2023 is attached as Annexure R-5.

10. It is submitted that the letter dated 13 Sep 2023 was issued in compliance of the Hon'ble Court order and the prayer made in the CM application that Respondent No. 2 ought to conduct. fresh counselling of Priority-III and Priority-IV for allocation of PG seats is against the letter and spirit of the Hon'ble High Court order of not disturbing admissions already made to the extent possible.

11. It is further submitted that the 02 candidates of Priority-IV who were allotted Gen Medicine are at merit position 1 and 4 in their priority with AIR 7555 and 19922 and if their seats are taken away at this stage the same may be against equity and fair play.

12. It is also submitted that the 03 applicants in the instant Miscellaneous Application have been the beneficiaries of the strict procedure adopted by the O/o DGAFMS and cannot be said to have a vested right over the General Medicine seats allotted to them.

4. It is, therefore, discernible from the aforementioned reply that the present applicants were ousted from Priority-III category and they have



been offered the available seats in Priority-V category, without considering their candidature under Priority-III itself, before allotting the seats to Priority-IV candidates.

5. *As per the directions given by this court, specifically in paragraph no. 59(iii), it is palpably seen that the respondents were also required to conduct the re-counselling for Priority-III and IV category, if the same was necessary to honour the merit position amongst respective category. Since the applicants admittedly belong to Priority-III category, therefore, these three candidates must be offered the available seats before any candidate from Priority-IV category is offered the seat i.e., before Priority IV category allotment comes into effect, present three applicants must be offered the seats. This exercise would have a cascading effect over Priority-IV category, however, the same is inevitable.*

6. *It is, therefore, necessary that the re-counselling for Priority-III and Priority-IV category be conducted as per the merit inter se priority of the candidates. Accordingly, it is directed that the three applicants who have been ousted from Priority-III category be offered seats before the allotment of seats to Priority-IV category candidates commences.*

7. *Let the aforesaid directions be complied with, immediately by the respondents.*

8. *List this application on 26.09.2023”.*

10. Thereafter, on 26.09.2023, in view of the steps taken by the respondents, the applicant in CM APPL. 48794/2023, withdrew the application. The order dated 26.09.2023 reads as under:-

“CM APPL. 48794/2023

1. Learned counsel appearing on behalf of the applicants submits that in view of the steps taken by the respondent, their grievance stands mitigated. He, therefore, at this stage, does not wish to press the present application.

2. The application is accordingly disposed of, as not pressed”.

11. On the same date i.e., 26.09.2023, the Hon’ble Division Bench, in LPA 661/2023 passed the following order:



“1. The present appeal impugns orders dated 11th September, 2023 and 21st September, 2023 passed in writ petition W.P.(C) No. 10856/2023 by the learned Single Judge of this Court. The underlying writ was filed by individuals seeking admission to Post Graduate medical courses in various Armed Forces Medical Services institutions, who were aggrieved on account of their non-inclusion in the merit list for “Priority III” candidates. Under the said category, the candidates were required to have a sponsorship certificate in line with the instructions specified in the concerned information bulletin dated 14th July, 2023. The learned Single Judge inter alia observed that there is only one format for the certificate at “Appendix A” of the said information bulletin, which requires both, a rubber stamp and an office seal. It was found that the candidature of some petitioners was rejected despite submitting appropriate sponsorship certificates and thus, directions were issued towards grant of admission and fresh counselling. The remaining petitioners were granted one week time to rectify their sponsorship certificates per the prescribed format.

2. Mr. Shubham Singh, learned counsel for Appellants challenges the finding of learned Single Judge that candidates holding sponsorship certificates without the requisite office seal are not entitled for their consideration against “Priority-III”. He states that there is no explicit requirement for an office seal specified in the concerned information bulletin, and places reliance on Clauses 16(c) and 20(f) to this effect. Thus, it is contended the lack of an office seal is a mere hyper-technical error, which cannot take away from the merit of the Appellants.

3. Mr. Rajesh Kumar, learned SPC for Union of India, at the outset, states that 51 seats are lying vacant at present and the Appellants will be permitted to participate in the counselling for the said seats.

4. At this juncture, Mr. Singh has pointed out that subject preferences in Appellants’ certificates are at variance from the subjects which have vacant seats. To this, Mr. Kumar has also categorically stated before this Court that Appellants will be admitted against vacant seats irrespective of the subjects mentioned in their sponsorship certificates. He also undertakes to provide the seat matrix to Appellants today itself.

5. Considering the statements put forth by the learned SPC for Union of India, the Appellants shall be permitted to participate in the counselling for the vacant seats. It is clarified that Appellant’s present certificates will be treated as provisional in nature and one weeks’ time is granted to Appellants to furnish proper certificates as per the format prescribed



under the said information bulletin. In case, there is no office seal for the sponsoring authority, then an affidavit from the said authority to that effect, shall be annexed with the sponsorship certificate by the candidate.

6. It goes without saying that the admissions made in pursuance of the above directions will be subject to the outcome of the present appeal.

7. Issue notice. Learned counsel for Respondents mentioned in appearance above accept notice. Let counter affidavit(s) be filed within a period of four weeks from today. Rejoinder thereto, if any, be filed on or before the next date of hearing.

8. Issue notice to the remaining Respondents, by all permissible modes, upon filing of process fee, returnable on the next date of hearing. Said Respondents shall file a reply within a period of four weeks from the date of service.

9. Re-notify on 10th November, 2023”.

12. If the stand taken by the respondent-AFMS is considered, the same is strictly in accordance with the mandate of the order passed by this court in W.P.(C) 10856/2023 and in LPA 661/2023. The respondent endeavoured to ensure that all eligible candidates should get admission without disturbing the entire process of counselling. It is an admitted position that on 11.08.2023, when the petitioner participated in the first round of counselling, the seats in question were not available in the concerned pool. Even on 14.08.2023, there was no question of displaying the seats for Priority V candidates. The respondents requested NMC and retrieved seats from dormant category to ensure that the eligible candidates are offered seats as per their merit.

13. It is, thus, seen that it is a fortuitous circumstance, when the petitioner on 11.08.2023, could not be offered the seats which came to be included in



the Priority V pool only after passing of the directions by this court. Since this court specifically directed that the directions should not result in unsettling the entire rounds of counselling, therefore, the aforesaid steps taken by the respondents cannot be termed as arbitrary or illegal.

14. The Hon'ble Supreme Court in the case of *Arvind Kumar Kankane v. State of U.P. and Others*¹ has held that after the first round of counselling, any subsequent counselling held for allocation for the remaining seats, including those which have fallen vacant subsequent to the first round of counselling, shall be filled in order of merit amongst the waitlisted candidates instead of putting the same back for counselling for all the candidates.

15. It is, thus, palpably seen that if the process of offering the seats which were inserted after the earlier round of counselling are again offered to the candidates from Stage-1, the same would result in an unending process, creating an unnecessary doubt about the credibility of the admission process itself. The counselling process must end before the cutoff date to preserve the academic interests.

16. At this stage, considering the aforesaid circumstances, this court is not inclined to interfere into the counselling.

17. Accordingly, the petition is dismissed alongwith pending application.

PURUSHAINDR KUMAR KAURAV, J

OCTOBER 11, 2023

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¹ (2001) 8 SCC 355