

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1853 OF 2024

Dr. Amit Kumarlal Motwani,]
DNB Resident / General Medicine,]
Jupiter Lifeline Hospital, Thane] .. Petitioner

Versus

1. The Union of India,]
Through Ministry of Health & Family]
Welfare, New Delhi.]
2. National Board of Examinations in]
Medical Enclave, New Delhi.]
3. Amaltas Institute of Medical Sciences,]
Dewas, Ujjain, Madhya Pradesh.]
4. The Head of the Institute,]
Jupiter Hospital, Thane.] .. Respondents

Mr. M.D. Lonkar with Mr. Om M. Lonkar, Advocates for the Petitioner.

Ms. Gargi U. Warunjikar, Advocate for Respondent No.1.

Mr. Ganesh K. Gole with Mr. Viraj Shelatkar, Advocates for Respondent No.2-NBE.

**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ**

DATE : 2ND AUGUST, 2024.

ORAL JUDGMENT : { Per A.S. Chandurkar, J. }

1. Rule. Rule made returnable forthwith and heard learned counsel for the parties.

2. The challenge raised in this writ petition is to the communication dated 10th November 2023 by which the candidature of the petitioner for

pursuing the DNB Post MBBS Course in General Medicine came to be cancelled on the ground that the petitioner had availed leave exceeding a period of one year.

3. After completion of his MBBS Degree, the petitioner was granted registration to undertake post graduate education at the respondent no.3-Institute. The petitioner has joined the said Institution on 26th June 2019. It is the case of the petitioner that he was diagnosed with a chronic kidney ailment and was advised kidney transplant. The petitioner therefore was on leave from 12th December 2019 to 23rd November 2020. In the meanwhile, the on-going accreditation of the respondent no.3-Institute came to be withdrawn by the respondent no.2-National Board of Examinations – NBE and the admission of the petitioner was re-located at the respondent no.4-Institute. He accordingly joined the said Institute on 26th November 2020. It is the further case of the petitioner that on 26th November 2020, the respondent no.3-Institute brought the fact of availing leave to the notice of the NBE. The NBE undertook communication with the respondent no.3-Institute and ultimately it revealed that the leave availed from 12th December 2019 to 23rd November 2020 exceeded the permissible limits. On that ground, the cancellation of the petitioner's candidature came to be effected by the impugned communication.

4. We have heard the learned counsel for the parties and we have perused the documents on record. Under the Leave Rules framed by the NBE, a DNB Trainee can avail maximum leave of thirty days in a year excluding regular duty off. Extension of the DNB training period beyond the scheduled completion date is permissible in extra-ordinary circumstances with prior approval of the NBE. In the reply filed on behalf of the NBE it has been stated that the fact that the petitioner had availed of leave from 12th December 2019 to 23rd November 2020 on medical grounds had not been informed by the respondent no.3 to the NBE. In paragraph 9 of the said affidavit, it has been stated as under :-

“9. I say that the respondent no.2 considering the aforesaid leaves of the Board could have cancelled the candidature of the petitioner as he has failed to follow the Leave Guidelines of the respondent no.2, however the respondent no.2 refrained from taking coercive action against the petitioner. I say that instead of cancelling the candidature of the petitioner, the respondent no.2 had accepted the joining of the petitioner in the Jupiter Hospital, Maharashtra.”

5. From the aforesaid stand of the NBE it can be gathered that despite the petitioner's absence, his admission was re-located at the respondent no.4-Institute wherein the petitioner has now completed his mandatory training of three years. In other words, though the admission of the

petitioner could have been cancelled on this count, the NBE refrained from doing so and thereafter re-located his admission.

6. The fact that the petitioner was on leave on account of his kidney ailment is not disputed. His availing of leave from 30th November 2020 to 30th June 2021 was approved and accepted by the NBE vide its communication dated 31st December 2021. It is only on account of non-communication by the respondent no.3 to the NBE of the leave availed by the petitioner for the earlier period from 20th December 2019 to 23rd November 2020 that the present situation has arisen. As noted above, even the NBE did not deem it appropriate to cancel the petitioner's admission and permitted his re-location. The Leave Rules permit extension to the completion of the DNB Training under extra-ordinary circumstances with prior approval of the NBE.

7. In the facts of the present case, when the petitioner was required to avail medical leave on account of his kidney ailment after which his admission was permitted to be re-located, we are of the view that for genuine medical reasons that were beyond the control of the petitioner, he ought to be permitted to complete his DNB Training by extending the training period. The respondent no.4-Institute has now issued a DNB Training Completion Certificate to the petitioner on 21st July 2024. No useful purpose would be now served by upholding the cancellation of the

petitioner's candidature for an earlier period especially when his leave for the subsequent period has been accepted. Though the learned counsel for the NBE sought to rely upon the decision in *Guru Nanak Dev University Vs. Parminder Kr. Bansal and Ors.*, (1993) 4 SCC 401 to support the impugned communication, we are satisfied that for circumstances beyond the petitioner's control, he was required to avail such leave.

8. Hence, for aforesaid reasons, the impugned communication dated 10th November 2023 issued by the NBE is quashed. The candidature of the petitioner at the respondent no.4-Institute for completing his DNB Training is upheld.

9. Rule is made absolute in aforesaid terms. No costs.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]