



(201)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-24407-2022 (O&M)

Date of decision:- 23.07.2024

Dr. Maneet Luthra

...Petitioner(s)

Versus

Government of India and others

...Respondent(s)

CORAM: **HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE**
HON'BLE MR. JUSTICE VIKAS SURI

Present:- Ms. Harveen Mehta, Advocate,
for the petitioner.

Mr. Arun Gosain, Senior Government Counsel (UOI),
for respondents No. 1 to 3.

Mr. Ashim Aggarwal, Advocate,
for respondents No. 4 & 5.

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SHEEL NAGU, C.J. (ORAL)

1. This petition has been filed under Article 226/227 of the
Constitution of India praying for the following reliefs:-

(i) Issue a writ of certiorari for quashing the order dated 26.09.2022
(Annexure P-13) passed by respondent No. 3 refusing to conduct counselling
for vacant post in the Department of Hematology in Fortis Memorial Research
Institute, Gurugram and consider the petitioner against the same.

(ii) Issue a writ of mandamus directing the respondents to hold a
special mop-up Round II for the vacant post and allow the petitioner to
participate therein and admit her against the vacant post.

2. The grievance of the petitioner is against the order
dated 26.09.2022 (Annexure P-13) by which respondents have refused to



conduct counselling for the vacant post in the Department of Hematology in Fortis Memorial Research Institute, Gurugram which fell vacant owing to resignation of Dr. Amadya Gupta.

3. Learned counsel for the petitioner does not dispute that Rules do not permit resignation of student who has been allotted seat.

4. Learned Senior Government Counsel appearing for respondents No. 1 to 3 has relied upon decision dated 13.04.2023 of Apex Court in Writ Petition(s) (Civil) No(s). 264 of 2023 titled ***Jaslok Hospital and Research Centre Vs Union of India*** which is to the following extent:-

“Writ Petition(s)(Civil) No(s). 264/2023

1. This petition arises out of peculiar facts.

2. Two students were admitted for Doctorate of National Board (DrNB) in the Department of Nephrology in the petitioner-institution. However, they resigned from their respective seats.

3. A communication with regard to such resignation was communicated to the National Board of Examinations in Medical Sciences (NBEMS) on 20.01.2023.

4. The mop-up round was subsequently conducted between 12.02.2023 and 16.02.2023. However, the said seats were not included in the mop-up round.

5. Being aggrieved thereby, the present petition is filed.

6. Shri Devadatt Kamat, learned senior counsel appearing on behalf of the petitioner, submits that apart from the students pursuing their studies for DrNB, the services of such students are required as Doctors in the Department of Nephrology. He submits that the shortage of two doctors in the Department of Nephrology is also likely to affect the smooth functioning of the petitioner-institution.

7. Smt. Aishwarya Bhati, learned Additional Solicitor General of India, on the contrary, submits that there was a specific direction to the institution that they should not permit the students to resign from their seats. It is submitted that in spite of that direction, the petitioner-institution has permitted the students to resign from the



seats and they cannot be permitted to take advantage of that. She further submits that unless this Court directs the resignation to be accepted and the seats be included in the mop-up round, the same could not have been offered by the Medical Counselling Committee (for short, 'MCC).

8. We find that the present petition arises out of peculiar facts. It is not as if that the petitioner has permitted the students concerned to resign from their seats, it will be relevant to refer to the following part of the communication dated 20.01.2023, addressed to the National Board of Examinations in Medical Sciences:-

“Request thereby stern action should be taken against these candidates by both, disqualifying them for in the next examination as well as procuring bond amount which should be exemplary. This will deter others from doing similar repetition in future.

Therefore NBEMS is requested to please include two (02) vacant seats in next Super Specialty counseling round for department of Nephrology for Jaslok Hospital and Research Centre, Mumbai against above mentioned DrNB trainees.”

9. It can thus clearly be seen that the petitioner has itself requested that a stern action should be taken against the candidates concerned.

10. Though we find that the learned Additional Solicitor General of India is right in contending that unless this Court directs that seats to be included under the mop-up round, the MCC could not do so; equally, there is no fault on the part of the Petitioner inasmuch as they had informed the National Board of Examination in Medical Sciences (NBEMS) about the resignation of 2 students much before the commencement of the mop-up round.

11. In the peculiar fact and circumstances of this case, without it being treated as a precedent, we are inclined to issue directions in exercise of our powers under Article 142 of the Constitution of India.

12. The main reason that weighs with us is that the students for the DrNB Course, apart from pursuing their career as student, are also required to treat the patients in the hospital.

13. In the fact and circumstances of the present case and without being treated as a precedent, we direct MCC to recommend two students to the petitioner-Jaslok Hospital and Research Centre



from the Department of Nephrology from the waiting list, as per the merit.

14. We clarify that in the event, if the MCC finds that special mop-up round is required to be conducted for recommending the admission, the MCC will be entitled to do so.

15. With the above observations and directions, the writ petition is disposed of.

16. Pending application(s), including application for intervention shall stand disposed of.”

5. After going through the aforesaid decision, it is quite obvious that Apex Court has in fact criticized the action of the Institution therein to allow two seats to become vacant on account of resignation of students in the hospital in question. Moreso, Apex Court has also allowed relief to the concerned petitioner and has held that the said order would not be treated as a precedent. The jurisdiction exercised by Apex Court is under Article 142 of the Constitution of India which cannot be exercised by this Court.

6. Moreso, it is informed that the process of admission including the counselling is over way-back in September, 2022.

7. In view of the above, this Court cannot help the petitioner and, therefore, the petition stands dismissed.

(SHEEL NAGU)
CHIEF JUSTICE

(VIKAS SURI)
JUDGE

23.07.2024
Amodh Sharma

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No