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

+ **W.P.(C) 11816/2024**

DR. GEETHA SINDHURI BARABARI

.....Petitioner

Through: Mr. Tishamputi Sen, Ms. Riddhi Sancheti, Mr. Anurag Anand and Mr. Mukul Kulhari, Advs.

versus

UNION OF INDIA & ANR.

.....Respondent

Through: Mr. Divjeet Singh Vohra, SPC for R-1
Mr. Kunal Sabharwal with Mr. Deepak Mahajan, Mr. Raghav Mittal, Mr. Prarthana Duggal and Mr. Shubham Madan, Advs. for R-2

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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13.11.2024

1. Through this captioned petition, the petitioner prays for following reliefs:-

i. *Issue any appropriate Writ/Order/Direction to the Respondents to advertise one additional seat for M.CH. (Master of Chirurgiae) - Plastic and Reconstructive Surgery course for July 2024 session at Respondent No. 2 Institution (AIIMS, New Delhi), in view of the Letter dated 09.04.2024.*

AND/OR

ii. *Direct the Respondents to grant seat/admission to the Petitioner in M.CH. - Plastic and Reconstructive Surgery course for July 2024 session at Respondent No. 2 (AIIMS, New Delhi) on one additional seat in terms of the protocol and process adopted for seat allocation under INI-SS Examination.*



AND/OR

iii. Issue any appropriate Writ/Order/Direction setting aside the Memorandum dated 23.08.2024 issued by the Respondent No. 2 Institution.

AND/OR

iv. Pass any other writ/ order/ direction which this Hon'ble Court deems fit in the interest of Justice.

2. A bare perusal of the prayer clause would indicate that the petitioner seeks for directions to advertise one additional seat for M.CH. (Master of Chirurgiae) - Plastic and Reconstructive Surgery course for July, 2024 Session at Respondent No.2-All India Institute of Medical Sciences (hereinafter referred as "AIIMS").

3. At the outset, it be noted that acceding to the prayer made hereinabove, would tantamount to putting back the clock. However, learned counsel for the petitioner tries to pursue for an alteration of prayer to the extent of directing allotment of seat in January, 2025 Session, without the petitioner being subjected to the fresh examination. Keeping in mind the aforesaid background the submissions have been heard.

4. Learned counsel for the petitioner then places reliance on the decision dated 22.07.2024 passed by this Court in W.P.(C) 8707 of 2024 titled as "**Dr. Chinmay Ankleshwaria. v. Union of India and Ors**" and contends that the controversy involved herein stands covered by the said decision.

5. Learned counsel while taking this Court through various paragraphs of the aforesaid decision has emphasised that the AIIMS ought to have advertised three seats in the concerned course instead of advertising only two seats. He then submits that Mr. Enaganti Ram Kishan Rao, who was pursuing the said course, tendered his resignation on 01.04.2024, whereas, the respondents have updated the seats position even upto 31.05.2024,



without considering the resignation and consequent vacancy of seat. According to him, in all fairness, the seat which had already been fallen vacant on account of the aforesaid resignation ought to have been included for July, 2024 Session for its allotment. He submits that the petitioner is the only meritorious candidate deserving admission, had the third seat been advertised.

6. Learned counsel further submits that though July, 2024 session has substantially progressed, however, keeping in mind the principles laid down by the Supreme Court and in view of the fact that the petitioner has been illegally deprived of the admission, the Court can always direct for securing the seat for petitioner in January, 2025 session, without the petitioner being compelled to face the fresh examination.

7. Learned counsel also takes this Court through various documents including notice dated 30.07.2024 and representation submitted by the petitioner on 31.07.2024. He has also explained from the reply sent by the AIIMS dated 23.08.2024 that AIIMS failed to act on petitioner's representation dated 31.07.2024. He placed reliance on the decision of ***Dr. Rohit Kumar v. Secretary Office of Lieutenant Governor of Delhi***¹.

8. The aforesaid contention is strongly opposed by learned counsel for the AIIMS and he takes this Court through various paragraphs of the counter affidavit to oppose the petitioner's case. While reading paragraph No. V(2), learned counsel submits that the mere fact of tendering resignation cannot be construed to be an occurrence of vacancy. He contends that it is the final outcome of the resignation application which could be the determinative factor.



9. Learned counsel then submits that in the instant case though the application was sent by Mr. Enaganti Ram Kishan Rao on 01.04.2024, however, it was placed before the competent authority and the final decision was taken only on 08.05.2024. Thus, he contends that the date of 08.05.2024 should be considered the formal acceptance of resignation and occurrence of the vacancy. Learned counsel then contends that in the instant case, the prospectus was issued on 27.03.2024 and the examination itself was conducted on 27.04.2024. Learned counsel also takes this Court to Clause 6.2(d) of the prospectus to indicate that after the conduction of the examination, no vacancy which occurs on account of any reason should be included for allotment to the candidate.

10. I have considered the submissions made by learned counsel for the parties and have perused the record of the case.

11. The perusal of the facts would indicate that the prospectus came to be issued on 27.03.2024 and the examination was admittedly conducted on 27.04.2024. The fact that on 08.05.2024, the formal resignation was accepted by the respondent also remains undisputed.

12. Thus, on the anvil of the said resignation, it is sought to be contended that the date of filing of the application itself should be a reason for construing the vacancy to have arisen against a particular course. The Court is of the considered opinion that the same cannot be the sole determinative factor for construing vacancy, as tendering of resignation *ipso facto* does not causes the vacancy rather, normally, it is the final acceptance of resignation that would ultimately have bearing over the vacancy. Moreover, the

¹ (2021)8 SCC 381.



ultimate vacancy matrix will have to be determined by the AIIMS keeping in mind extant rules and regulations.

13. In the instant case, Rule 6.2(d) of the prospectus further stipulated that out of the candidates who fulfil the eligibility criteria, three times the number of seats advertised for AIIMS/PGIMER Chandigarh, combined or two times the total number of seats in AIIMS/PGIMER Chandigarh & other INIs, whichever is higher or as decided by the competent authority at the time of declaration of result, will be called for departmental clinical/practical/labbased assessment (carrying 20 marks) related to subspecialty/ systems/component of the specialty/course for which the candidate has applied in respective department at AIIMS, New Delhi. It is, thus, seen that the seat position once advertised and determined at the time of issuance of the prospectus or at the time of declaration of the result must remain sacrosanct. Any alteration in the seat position after declaration of result is certainly bound to create various anomalies. This exercise if done in a routine and casual manner will have cascading effects over all prospective candidates who may desire for admission against the advertised seats. In this case, what is significant to note is that the petitioner is not the only candidate who could have been offered the seat, had three seats been advertised at the relevant point of time. The petitioner has been shortlisted amongst the candidates, who were proportionally called out, against those two advertised seats.

14. However, if three seats were to be advertised, the AIIMS ought to have proportionally increased the number of candidates for screening process. Then in that eventuality, it cannot be countenanced that the petitioner would surely be getting the admission as there would be



consequently increase in the number of candidates for screening process.

15. This is not the only reason, which restrains this Court to reserve a seat for the petitioner. Another significant aspect which would require consideration is whether the action of the respondent suffers with palpable arbitrariness so as to construe that petitioner has been illegally deprived from admission.

16. The relevant dates as has been noted, hereinabove, would clearly indicate that the resignation itself was tendered in the month of April, 2024 which came to be accepted in the month of May, 2024, whereas, the advertisement for the July, 2024 Session was issued in the month of March, 2024 itself. It is, thus, seen that by no prudent stretch of imagination, the seat which would have fallen vacant in the month of May could not have been included in the advertisement, which was published initially on 27.03.2024.

17. Moreover, the decision in the case of **Dr. Chinmay Ankleshwaria** relied upon by the petitioner will not be of any assistance to him as facts are clearly distinguishable. In the said decision, there was an inordinate delay on part of the authority in reporting resignation of one of the candidates which ultimately led to non-advertisement of the seat. Therefore, in that peculiar factual circumstance, the Court ordered for additional seat for petitioner therein.

18. Furthermore, the Supreme Court in the case of **Dr. Rohit Kumar**, which has been extensively relied upon by the petitioner, not only cautioned that such recourse should be taken only in rare and exceptional circumstances, but also opined that the same should not be treated as a precedent. The relevant paragraphs of the said decision reads as under:-



“33. The proposition of law which emerges from the judgments of this Court in S. Krishna Sradha and in National Medical Commission v. Mothukuru Sriyah Koumudi is that in rare and exceptional cases, a meritorious candidate, who has suffered injustice by reason of his/her inability to secure admission in a medical course, whether undergraduate or postgraduate, due to no fault of his/her own, who has taken recourse to law promptly, without delay, might be granted relief of being accommodated in the Same post in the next session.

44. These directions are being passed in exercise of the power of this Court under Article 142 of the Constitution of India, in the facts and circumstances of this case, having regard to the fact that the Appellant had cleared INICET 2020 held in November 2020 and had been offered admission to PGI, Chandigarh, but could not join as he was not released on Study Leave in view of the serious COVID-19 situation prevailing in NCT of Delhi at the material time, and this order will not be treated as a precedent.”

19. Thus, the benefit cannot be extended as has been sought on the basis of the decisions in the aforementioned cases.

20. The Court also takes note of the fact that July 2024 session has already been substantially progressed and we are already in the month of November, 2024. Moreover, this examination namely "INI-SS" is conducted twice in a year and thus, the petitioner still has a chance to appear in January, 2025 examination. If the petitioner competes in the said examination there is no doubt that his merit shall not be honoured.

21. Therefore, on the conspectus of the judicial precedents as expounded above and reasoning enshrined therein, the Court finds that the non-inclusion of the seat in question cannot be said to be an arbitrary action on the part of the AIIMS. Moreover, no injustice can be said to have been caused to the petitioner.

22. In view thereof, the Court is not inclined to accede to the prayer made in the instant petition and accordingly, the present petition stands dismissed.



All pending applications are also disposed of.

PURUSHAINdra KUMAR KAURAV, J

NOVEMBER 13, 2024
DPA