



CWP-24882-2021 (O&M)

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

CWP-24882-2021 (O&M)

Date of decision: 15.05.2025

Dr. Ajit Nagar

....Petitioner

V/s

Pt. B.D. Sharma University of Health Science, Rohtak
and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Mr. Karan Bhardwaj, Advocate for the petitioner.

Mr. Satyawan Ahlawat, Advocate for respondent Nos.1 to 4
(through Video Conferencing).

Mr. Deepak Balyan, Additional Advocate General, Haryana for
respondent Nos. 5 & 6.

None for respondent No. 7.

SUMEET GOEL, JUDGE

1. The *writ in hand* has been preferred under Articles 226/227 of the Constitution of India, in essence, seeking quashing of the order dated 30.11.2021 passed by respondent No.2 (Annexure P-15) thereby imposing a condition to the effect that the petitioner would have to resign from the post held by him and that his lien on the said post will not be retained in the event of his selection in the P.G. course (hereinafter referred to as '*course in question*'), while affording requisite 'No Objection' (hereinafter referred to as '*NOC*') to the petitioner for attending counselling of NEET P.G., 2021.

2. Shorn of non-essential details, the relevant factual matrix of the *lis* in hand is adumbrated, thus:



- (i) The petitioner joined the State Institute of Mental Health, UHS Rohtak (respondent No.2-herein) on 23.04.2011 on the substantive post of Medical Officer.
- (ii) The National Board of Examination (hereinafter referred to as 'NBE') issued notification/information bulletin for NEET-P.G.-2021 courses in the year 2021.
- (iii) The petitioner sought for requisite *NOC* from his employer-respondent No.2 which was granted, vide communication dated 22.03.2021, subject to the stipulation that, in the event of his selection the petitioner would have to resign from his post and would not be permitted to retain the lien.
- (iv) The petitioner, aggrieved by the imposition of the above stipulation while granting him *NOC*, filed a Civil Writ Petition (CWP-23943-2021) before this Court which came to be disposed of by way of the following order on 29.11.2021:

“Learned counsel for the petitioner, after arguing at length, submits that the respondents may be directed to consider and take a decision on the representation dated 18.11.2021 (Annexure P-10) submitted by the petitioner for grant of No Objection Certificate to enable him to participate in Central as well as State Counselling of NEET PG 2021.

*Learned counsel for respondents No.1 and 2 submits that the representation dated 18.11.2021 (Annexure P-10) of the petitioner shall be considered and decided expeditiously, if already not decided, in accordance with law and decision thereon shall be communicated to the petitioner or *NOC* shall be issued to him, as the case may.*

In view of the statement made by learned counsel for respondents No.1 and 2, the petition stands disposed of.

*It has been stated that tomorrow is the last date for submission of *NOC*, therefore, a copy of this order be given free of costs to learned*



counsel for respondents No.1 and 2 under the signatures of the Bench Secretary, to enable him to comply with the order.”

(v) In compliance of the above, the respondent No.2 passed a speaking order on 30.11.2021 namely the *impugned order*, relevant whereof reads thus:

“In compliance with the Hon’ble High Court order dated 29.11.2021 in CWP No.,23943 of 2021, the present speaking order is passed after consideration of the representation dated 18.11.2021 given by the petitioner thoroughly and as per the decision of the competent authority, it is intimated that this office has no objection, if Dr. Ajit Nagar, Medical Officer attends the counseling of NEET PG- 2021 with the stipulation that in the event of selection in PG Course, he would have to resign from the present post held by him and that his lien on the present post will not be retained. ”

(vi) Thereafter, the petitioner approached this Court by way of writ *petition in hand* wherein the following order was passed on 23.12.2021:

“Notice of the application (CM-19603-CWP-2021) for 25.01.2022.

Learned counsel for the applicant/petitioner has referred to the letter dated 05.10.2015 (Annexure P-20) wherein the Registrar, Pt. B.D. Sharma University of Health Sciences, Rohtak has recommended for grant of NOC to the present petitioner. Since NOC was not issued in time, he missed the chance of participating in counseling for post-graduation course. The same situation is arising this year as well. Hence, direction is being given to respondents No.1 and 2 to issue NOC to the petitioner and in the meantime, the petitioner shall provisionally participate in the counseling which is scheduled to be held on 27.12.2021.”

(vii) It is in this factual backdrop that the writ *petition in hand* has come up for receiving final consideration at the hands of this Court.

**Rival Submissions**

3. Learned counsel for the petitioner has argued that the *impugned order* has been passed placing reliance upon the Haryana Civil Services Rules, 2016 which are not applicable to the petitioner since his services are governed by the Haryana Medical Education Department and Pt. B.D. Sharma University of Health Sciences, Rohtak Regulations (as amended from time to time). Learned counsel has further iterated that the petitioner had been working with the respondent No.2, on the substantive post of Medical Officer therein since 23.04.2011 and had also completed his probation to the satisfaction of the concerned authority(s) and it would, thus, be unjust for the respondent-side to now expect the petitioner to resign from the post for pursuing the *course in question*. Learned counsel has further urged that the provisions of permission for a medical doctor to pursue higher studies is beneficial not only to such an aspirant but also to the Society at large and this aspect has been given a complete go-by while passing the *impugned order*.

Learned counsel has further implored that, pursuant to the interim order passed by this Court on 23.12.2021, the petitioner has completed the *course in question* and it would be grossly unjust if the petitioner is now not allowed to reap the benefit of his having diligently pursued and completed the *course in question* on 27.04.2024.

On the strength of these submissions, the grant of *petition in hand* is entreated for.

4. Notice of motion was issued wherein the respondents, except respondent No.7-NBE, have entered appearance through counsel. Repeated



endeavours to serve respondent No.7-NBE have been in vain. Since respondent No.7 is not a contesting respondent insofar as the claim(s) made in the *petition in hand* is concerned, therefore, this Court proceeded to hear the matter finally on 07.05.2025 and reserved the judgment.

4.1. A written reply has been filed on behalf of respondent Nos.1 to 4. The relevant stand taken in the reply reads, thus:

- “1. That the petitioner kept mum almost 9 months and never objected prior to filing of writ petition. The petitioner has also earlier filed the Civil Writ Petition No.23943 of 2021 and has not challenged the order of Competent Authority i.e. Vice Chancellor, which were conveyed vide order dated 22.03.2021 to the petitioner at the time of granted permission to appear in NEET PG-2021 with the stipulation that in the event of selection in PG course, he would have to resign from the present post held by him and his lien on the present post will not be retained due to acute shortage of staff. The post sanctioned for State institute of Mental Health, Rohtak are dedicated posts in the interest of patients care. The State institute of Mental Health, Rohtak is non teaching institute. The Government also conveyed vide letter dated 19.12.2014 that the staff working /posted /recruited in State Institute of Mental Health Rohtak may not be transferred/ deputed/ utilized any other department/branch of the university.*
- 2. That HCMS rule are not applicable in the case of petitioner as the petitioner is employees of State Institute of Mental Health Rohtak, which is under control of Pt .B. D. Sharma, UHS Rohtak and HCMS rules are applicable on Doctors posted under control of Health department Haryana. The petitioner has also filed the CWP No. 27276 of 2018, in which, he also claimed the ACP benefits equal to HCMS Doctors and same petition is still pending and no relief has been granted to the petitioner yet.”*

Raising submission, in tandem with the reply, learned counsel for respondent Nos.2 to 4 has iterated that the State Institute of Mental Health is non-teaching institute and was not in a position to spare the staff for pursuing higher studies by them as there was an acute shortage of requisite staff. It is in this background that the petitioner (herein) was



afforded the *NOC* with the stipulation that he shall have to resign in case of selection and his lien would not be retained.

4.2. No reply has been furnished on behalf of respondent Nos.5 and 6. Learned counsel appearing for respondent Nos.5 and 6 has urged that the prime contesting respondents are respondent Nos.1 to 4 only as the *impugned order* has been passed by Director of State Institute of Mental Health-respondent No.2 (herein).

On the strength of these submissions, dismissal of *writ petition in hand* is sought for.

5. We have heard learned counsel for the rival represented parties and have perused the record.

Prime Issue

6. The prime issue that arises for cogitation in the *writ petition in hand* is as to whether the stipulation imposed in the *impugned order*, to the effect that *NOC* was granted to the petitioner subject to his resigning from the post held by him and that his lien on the said post will not be retained, is required to be quashed.

Analysis

7. Before proceeding to dilate upon the rival contentions, a pertinent aspect of the *lis* in hand craves attention at this juncture.

It is common ground between the learned counsel for the rival represented parties that, in terms of the interim order dated 23.12.2021 passed by this Court, the requisite *NOC* was issued to the petitioner whereinafter he has not only provisionally participated in the counselling



which was scheduled to be held on 27.12.2021, but was actually admitted to the *course in question* and has even successfully completed the same on 27.04.2024.

7.1. At this juncture, it would be apposite to refer herein to a judgment passed by this Court in ***Simran Shakya vs. Government Medical College and Hospital, Sector 32, Chandigarh and another*** = 2025: PHHC:012822-DB, relevant whereof reads as under:

“3. When the main writ petition was taken up for hearing today, it is the common ground of the rival parties that the petitioner has successfully completed the course in question i.e. MBBS. The issue which needs consideration, at this juncture, is as to whether and in what manner a subsequent event (that the petitioner has successfully completed course in question) after the institution of the present writ petition is required to be delved into. A three Judge Bench of the Hon’ble Supreme Court in a case titled as ***Pasupuleti Venkateshwarlu vs. The Motor and General Traders*** AIR 1975 SUPREME COURT 1409; has held as under:

“4. xxxxxxxxxxxx. First about the jurisdiction and propriety vis. a vis. circumstances which come into being Subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief for the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice--subject, of course, to the absence of other disentitling (actors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myraid. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in



accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. xxxxxxxxxxxxxx”

*Further, a Five Judge Bench of the Hon’ble Supreme Court in a case titled as **State of Maharashtra vs. Milind AIR 2001 SUPREME COURT 393**, dealing with somewhat similar set of facts as are in the present case, has held as under:*

“31. Respondent no. 1 joined the medical course for the year 1985- 86. Almost 15 years have passed by now. We are told he has already completed the course and may be he is practicing as doctor. In this view and at this length of time it is for nobody's benefit to annul his Admission. Huge amount is spent on each candidate for completion of medical course. No doubt, one Scheduled Tribe candidate was deprived of joining medical course by the admission given to respondent no. 1. If any action is taken against respondent no. 1, it may lead depriving the service of a doctor to the society on whom public money has already been spent. xxxxxxxxxxxxxx”

4. As noted hereinabove, it is not in dispute that the petitioner has successfully completed her MBBS degree course, though on the basis of interim protection afforded to her by this Court. There is no allegation of any fraudulent or misleading practice having been undertaken by the petitioner. The respondent No.2, whose admission was affected on account of the petitioner having been granted admission to the course in question, was also protected by this Court in CWP-18187-2016 & it is not disputed by the learned rival counsel that she (respondent No.2) has also completed the course-in-question successfully. At this juncture, it will yield no result(s) for anyone if the petitioner’s qualification/admission is rescinded in anyway. It will be universally futile in case the petitioner is not permitted to reap the benefit of her having completed her MBBS degree course; even the Society would be deprived of the service(s) of a qualified doctor for which scarce resources of a public-funded medical institution have been utilized. It would be a waste of the training, time, efforts of the faculty and other resources in the medical institution; as well as it will adversely affect the life of the petitioner, if she were not allowed to undertake the profession for which she has been declared qualified. It will bring no gain rather will have no effect at all, to the respondent No.2; if the petitioner is denied her qualification. In essence, it would be



unproductive for the Society at large to deny medical practice based on her qualification to the petitioner.”

7.2. Further, in a judgment titled as ***Jasmeen Kaur vs. State of Punjab and others*** = **2025: PHHC:022697**, this Court has held as under:

“In general terms; Equity is a notion of fairness, impartiality and even-handed dealing. Osborne considered equity as fairness and related it with natural justice. For Aristotle, equity is a correction of the law, where the law is defective owing to its universality. The term "Equity" originates from the Roman term "aequitas", suggesting the idea of equality, equilibrium, and proportion. The writ jurisdiction of a High Court, as enshrined under Article 226/227 of the Constitution of India, is not confined to the rigid contours of legalistic adjudication but extends to the realm of equity, ensuring that the justice is dispensed in its truest and fairest form. The court, while exercising its extraordinary jurisdiction, does not merely function as a mechanical arbiter of legal principles but also as a custodian of justice, obligated to prevent manifest injustice, even in the cases, where strict legal norms may appear adverse to the petitioner. The doctrine of equity, which serves to temper the rigidity of the law, mandates judicial intervention to prevent an inequitable outcome. Equity, while operating within the framework of the law, does not permit legal provisions to be enforced in a manner that results in undue hardship, oppression, or disproportionate consequences. The purpose of legal norms is to uphold fairness, not to be applied mechanically to defeat substantial justice. Where a party, albeit initially ineligible, has acted in good faith and without any fraudulent intent, and where no overriding public interest is adversely affected, equity demands that the individual should not be subjected to disproportionate hardship solely on the basis of a technical defect at the inception. Furthermore, legal principles must be applied in a manner that align with the objectives of justice and fairness. The writ Court, as the guardian of justice, must ensure that legal procedures are not used as instruments of rigidity, but rather as vehicles for advancing fairness and mitigating undue hardship. Thus, in circumstances where a litigant has, in good faith, undertaken significant commitments based on a reasonable expectation of progression, equity mandates a balanced approach that upholds the substantive ends of justice while avoiding an unduly harsh application of the law. Judicial intervention is warranted where a litigant has acted in good faith and where allowing strict



compliance with technical requirements would result in unwarranted hardship. The maxim actus curiae neminem gravabit (an act of the court shall prejudice no one) applies herein with complete vigour, reinforcing the salutary principle that the writ court should not allow its process to be employed in a manner that defeats substantive justice. A rigid application of rules should not undermine the broader principles of fairness and justice. The doctrine of proportionality, another cornerstone of judicial review, necessitates that the adverse impact on the petitioner must be weighed against the broader objectives of the regulatory framework. Ergo, in the exercise of its equitable jurisdiction, the writ Court must not render decision(s) that results in punitive detriment to the litigant, especially when no fraud, misrepresentation, or malafide intent is attributable to such litigant. The writ Court must desist from taking a hyper-technical view that subverts substantive justice. Instead, a holistic approach, ensuring that equity and good conscience prevail, must be the guiding beacon in the adjudication of such matters. The writ jurisdiction must, thus, be wielded as an instrument of justice rather than an inflexible adjudicatory tool, bound by pedantic legal formalities.”

7.3. Considering that, pursuant to the interim order dated 23.12.2021 earlier passed by this Court; in terms whereof the petitioner has not only provisionally participated in the counselling for admission to the *course in question* but was even admitted thereto and has successfully passed the *course in question*; this Court finds that it would be manifestly unjust as also inequitable to annul or invalidate such an admission, at this stage.

In adopting this course, this Court places reliance upon the *dicta* of a judgment passed by this Court in ***Harsimran Kaur vs. State of Punjab*** = 2025:PHHC:062706-DB; relevant whereof reads as under:-

“In the hallowed halls of justice, it is a cardinal principle that no litigant ought to suffer a detriment owing to the vicissitudes of judicial delay. While the machinery of justice is designed to function with diligence and dispatch, practical realities — such as an inundated docket,



*administrative constraints, or systemic inertia — may, on occasion, impede the timely adjudication of disputes. In such instances, where the delay in the resolution of the lis is attributable to no fault of the litigant, the Court must tread with circumspection to ensure that justice is not only done but manifestly seen to be done. It is here that the enduring legal maxim, namely, **actus curiae neminem gravabit** assumes paramount importance. This venerable precept enshrines the sacrosanct doctrine that no party should suffer because of the fault or delay of the Court. Where judicial proceedings have been protracted not by the inaction or negligence of a litigant, but rather due to institutional delays beyond the party's control, the judiciary ought to adopt a corrective, rather than punitive stance.*

*To put it differently, for instance, an interim relief is granted by a writ Court in favour of a litigant — be it in the form of a stay order, an injunction, or the temporary enjoyment of a right or entitlement — pending final adjudication. If, owing to systemic delays, the final determination of the matter is deferred over an inordinate length of time, the litigant must not, upon disposal, be divested of the benefit that had accrued during the interregnum. To do so would tantamount to a grave miscarriage of justice and an unwarranted forfeiture of rights, lawfully bestowed during the pendency of the matter. The writ Courts are not merely passive arbiters but active guardian of equitable dispensation. It is duty-bound to obviate the possibility of a litigant being rendered remediless on account of procedural inertia. To adopt any contrary view would embolden a jurisprudence of attrition, wherein the mere passage of time, albeit unintended, could operate to the prejudice of one who has approached the Court in good faith and in pursuit of legitimate relief. It would be wholly repugnant to the foundational tenets of equity and fair play, if the delay, not solely occasioned by the parties, but attributable to the judicial process as well, were to result in forfeiture of rights or cause irreparable detriment. The Court, therefore, bears a solemn duty to ensure that interim protections — granted to preserve the substratum of justice — do not lapse into otiosity or become illusory by reason of judicial delay. The dicta of the enunciation by the Hon'ble Supreme Court in case of **Zaid Sheikh** (supra) endorses this fundamental canon of our jurisprudence. This is especially imperative in cases, where such interim relief has matured into a de facto entitlement, the withdrawal of which by*



way of the final order would be akin to stripping armour from a soldier mid-battle, after having led him onto the battle field under its shield.

8. A perusal of the *impugned order*, indubitably, reflects that respondent No.2 had no objection to the petitioner attending the counselling of the *course in question* but with the stipulation that in the event of selection in the *course in question*, the petitioner would have to resign from the post held by him and that his lien on the said post will not be retained. Much water has flown since the *impugned order* passed on 30.11.2021 and substantial factual development(s) has taken place since then especially the petitioner having passed the *course in question*. An age-old adage, which met with approval from the Hon'ble Supreme Court reads, thus:

“A court of equity must so act, within the permissible limits so as to prevent injustice. ‘Equity is not past the age of child bearing’ and an effort to do justice between the parties is a compulsion of judicial conscience. Courts can and should strive to evolve an appropriate remedy in the facts and circumstances of a given case, so as to further the cause of justice. Within the available range and forging new tools in the said purpose, if necessary to chisel hard edges of the law.”

Ergo, in the peculiar factual matrix of the *writ petition in hand*, we deem it appropriate to quash the *impugned order* & direct the respondent No.2 to pass a fresh speaking order, in accordance with law, after taking into account the subsequent factual development(s).

Decision

9. In view of the preceding ratiocination, the *writ petition in hand* is disposed off in the following terms:

(i) The admission of the petitioner and his passing the *course in question*, pursuant to the interim order dated 23.12.2021 earlier passed by



this Court, is directed to be regularized; the *impugned order* dated 30.11.2021 passed by respondent No.2 is set-aside & the respondent No.2 is directed to pass a fresh speaking order in accordance with law, within 45 days from receipt/production of certified copy of this judgment, after affording requisite opportunity of hearing to the petitioner, by taking into account the entire factual gamut of the *lis* in hand including the substantial factual development(s) which has taken place pursuant to 30.11.2021 i.e. the day when the *impugned order* was passed.

- (ii) The *ratio decidendi* of the *writ petition in hand* shall not be considered as precedent as the same has been passed in its individualistic, peculiar and accentuating factual milieu.
- (iii) No order as to costs.

(SUMEET GOEL)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

May 15, 2025
Ajay

Whether speaking/reasoned:	Yes
Whether reportable:	Yes