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

+ W.P.(C) 6894/2022 & CM APPL. 21018/2022

DR. MAHENDRA SINGH RANA Petitioner

Through: Mr. Shikhar Khare, Advocate.

versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCES & ANR.

..... Respondents

Through: Mr. Dushyant Parashar and Ms. Manu Parashar, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **25.05.2022**

1. Petitioner, a qualified doctor, working as a Senior Resident at the Department of Surgery, Dr. Rajendra Prasad Government Medical College (“RPGMC”), Tanda, Kangra, Himachal Pradesh was selected as a sponsored trainee for M. Ch. Minimal Access Surgery & General Surgery – a highly specialized course at All India Institute of Medical Sciences (“AIIMS”), New Delhi. Due to an unfortunate turn of events, his sponsorship was withdrawn, but subsequently restored. In the interregnum, his admission for the above course was cancelled, constraining him to file the present petition.

BRIEF FACTS

2. This cancelation of admission has arisen on account of an unfortunate turn of events, which are narrated in detail hereinafter. Before that, the facts,

in brief, are as follows: In March, 2021, AIIMS issued a prospectus for admission to various super-speciality courses for the academic session commencing from July, 2021 – including the above-said M. Ch. course on Minimal Access Surgery & General Surgery. Meanwhile, on 27th February, 2019, the State Government of Himachal Pradesh had issued a fresh policy for regulating admissions to various post-graduation and super-speciality courses in medical education outside the state of Himachal Pradesh [*hereinafter*, “**2019 Policy**”]. Petitioner was not granted sponsorship under the 2019 Policy and his request to pursue post-graduation at AIIMS, Delhi was rejected in April, 2021.

3. Aggrieved, Petitioner filed CWP No. 2289/2021 before the High Court of Himachal Pradesh, whereby *vide* interim order dated 6th April, 2021, a direction was given to Respondent No. 2 – Health and Family Welfare Directorate, Himachal Pradesh to issue a provisional NoC in Petitioner’s favour, subject to the final outcome of the writ petition. Subsequently, *vide* judgment dated 19th July, 2021, it was directed that Petitioner may be issued the sponsorship certificate/ NoC for pursuing post-graduation/ super-speciality courses outside the state.

4. On 2nd August, 2021, AIIMS issued a formal communication to Petitioner – confirming his selection as a sponsored trainee for the above-stated course. Respondent No. 2 also issued the sponsorship certificate/ NoC on 4th August, 2021 in Petitioner’s favour.

5. Subsequently, another candidate challenged the said judgment dated

19th July, 2021 by preferring an appeal before the Division Bench of the High Court of Himachal Pradesh, wherein the judgment of the Single Judge was stayed *vide* interim order dated 10th August, 2021. Based on said interim order, Respondent No. 2 withdrew the sponsorship certificate/ NoC issued in Petitioner's favour and requested him to rejoin RPGMC, Tanda.

6. Aggrieved by the said decision of the Division Bench, Petitioner preferred a Special Leave Petition,¹ which was disposed of *vide* order dated 4th October, 2021 – with a direction that Petitioner should approach the Division Bench of the High Court of Himachal Pradesh for an expeditious disposal of pending appeals. Subsequently, on 24th November, 2021, the Division Bench set aside the Single Judge's judgment dated 19th July, 2021.

7. Independent of the said proceedings, Petitioner approached the State Government of Himachal Pradesh and officials of Respondent No. 2 to consider his case, citing that he would suffer grave harm and prejudice. On the basis thereof, Secretary (Health), Government of Himachal Pradesh, as a one-time exception, permitted Petitioner to resume the course at AIIMS. Accordingly, the sponsorship certificate/ NoC given by Respondent No. 2 was restored and the same was communicated to AIIMS. Petitioner reported at AIIMS, Delhi on 21st April, 2022 to resume the course, however, he was informed that his admission had been cancelled and his seat had been advertised for fresh admission for the session starting from July, 2022.

¹ In Special Leave Petition (C) Diary No. 23040/ 2021.

8. In these circumstances, Petitioner has approached this Court by way of the instant petition. On 02nd May, 2022, this Court, at an interim stage, considered the entire *gamut* of the case and granted interim protection.

9. The Court has heard the counsel at length and given due consideration to the contentions advanced. From the facts narrated above, it is manifest that Petitioner remains a ‘sponsored category’ candidate of Respondent No. 2. The Petitioner cannot be faulted, as it is an admitted position that after initially issuing the sponsorship certificate/ NoC in Petitioner’s favour on 2nd August, 2021, Respondent No. 2 sought to withdraw the same on 17th September, 2021. However, this withdrawal order was subsequently recalled on 18th April, 2022, thereby, once again holding Petitioner eligible as a ‘sponsored category’ candidate for the seat against which he had been earlier admitted in August, 2021. Although Respondent No. 2’s action in carrying-forward the seat vacated by Petitioner in September, 2021 to the next academic session cannot be held to be unjustified, yet, the undisputed fact remains that the sponsorship certificate/ NoC in Petitioner’s favour has been restored by Respondent No. 2 by recalling the earlier withdrawal order dated 17th September 2021.

10. That said, it also emerges that pursuant to the entrance exam conducted by AIIMS for filling this seat, which was carried forward in the next academic session, no candidate has been found eligible against the seat reserved for the ‘sponsored category’ candidate for the M. Ch. Minimal Access Surgery & General Surgery course at AIIMS, New Delhi. This fact is not controverted by Mr. Dushyant Parashar, counsel for AIIMS. During

the course of submissions, the primary grievance addressed by AIIMS is that grant of relief, as sought by Petitioner, would set up a wrong precedent. In addition, Mr. Parashar submits that Petitioner did not take exams for the academic session commencing from July, 2022 – which is a flagrant violation of the prospectus. Their concern is that Petitioner was a candidate of the July, 2021 intake session, and in the event any relief is granted at this stage, Petitioner would be joining from the academic session commencing from July, 2022 and this should not be allowed.

11. However, as discussed above, the situation has arisen because of circumstances beyond the Petitioner's control. The seat in question remains vacant, and therefore, no prejudice is being caused to any person, in case the relief so sought, is granted. Thus, in the opinion of the Court, justice would be served in allowing Petitioner to join the said course from the session commencing from July, 2022. To allow the seat to remain vacant for a super-speciality course like the one in this case, would serve the interests of none. If a doctor, like the Petitioner, undergoes training for such a course, it would only prove a valuable addition to the healthcare system. This weighs heavily with the Court for granting the relief as prayed for.

12. Accordingly, the petition is allowed and AIIMS is directed to admit Petitioner for the M. Ch. Minimal Access Surgery & General Surgery course in the next academic session, commencing from July, 2022. The Court also notes that the above-noted findings have been consciously made with regard to the peculiar facts and ensuing circumstances that have arisen in the present case.

13. With the above directions, the present petition is disposed of, along with other pending applications.

SANJEEV NARULA, J

MAY 25, 2022/d.negi