



Ref. U-12021/08/2021-MEC

Dated: 22-07-2022

NOTICE

Kind Attention candidates participating in Special Mop-Up Round-II of NEET-SS Counselling, 2021:

This is for the information of all the candidates participating in the Special Mop-Up Round-II of NEET-SS Counselling, 2021 that *D.M. Geriatric Mental Health at King George's Medical University UP, Lucknow* is being included in the Special Mop-Up Round-II of NEET-SS Counselling in compliance of the *Order dated 16/07/2022 in W.P. (C) No. 3283 of 2022 in the matter of Dr. Richa Shukla v/s UoI & Ors.* before the Hon'ble Allahabad High Court at Lucknow.

Inst. Name	Program	Quota Name	Total Seat
King George's Medical University UP, Lucknow, Shahmina Road Chowk Lucknow, Uttar Pradesh, 226003	D.M. Geriatric Mental Health	AIQ	1

Dated: 22/07/2022

Court No. - 17

Case :- WRIT - C No. - 3283 of 2022

Petitioner :- Dr. Richa Shukla

Respondent :- Union Of India Thru. D.G. Of Health Services
Ministry Of Health And Family Welfare And 2 Others

Counsel for Petitioner :- Prabhu Ranjan Tripathi

Counsel for Respondent :- A.S.G.I., Shubham Tripathi

Hon'ble Pankaj Bhatia, J.

The present petition has been filed alleging that the petitioner participated in the NEET SS to various super specialty DM/MCh/DrNB Courses in the academic sessions 2021-22 and secured 7th Rank in D.M. Geriatric Mental Health Branch. It is argued that in the Branch, in which the petitioner had qualified, there were three seats available and as the petitioner was ranked at Serial No. 7, the petitioner had to await his turn subject to six candidates before him exercising their option. It is argued that the candidates at Serial Nos. 1, 2 and 3 did not participate in the counselling, as such in the next round of counselling, the same was offered to the candidates placed at Serial Nos. 4, 5 and 6.

It is stated that the second round of counselling in respect of the said seats was held and as the seats had already been taken up by the candidates placed at Serial Nos. 4, 5 and 6, the seats were not reflected in the second round of counselling. Subsequent to the second round of counselling Dr. Sumit Mukherjee, the candidate placed at Serial No. 6 tendered his resignation on 27th April, 2022, as a result whereof one seat out of the total three seats of Geriatric Mental Health Branch became vacant. It is stated that the petitioner expected that the said seat vacated by Dr. Sumit Mukharjee would be available in the mop-up round of counselling conducted by the respondents, however, the said seat was not reflected for the proposed mop up round of assessed counselling 2021, as such the petitioner

preferred the present writ petition.

In the present case, it has been averred that the seat matrix for the mop-up round of counselling was released on 27.05.2022 at around 3:00 p.m., which demonstrated that 612 unfilled seats were proposed to be filled up through mop-up round of counselling, however, the said seat vacated by Dr. Sumit Mukherjee was not reflected in the said seat matrix.

The petitioner came to know of the said fact that the seat vacated by Dr. Sumit Mukherjee is not reflected in the seat matrix of mop-up round of counselling, approached respondent no. 1 by writing through e-mails and prayed that the vacant seat of D.M. Geriatric Mental Health Branch should be included in the mop-up round of counselling, which became vacant on account of resignation of the 6th rank holder namely, Dr. Sumit Mukherjee.

When the writ petition was filed, this Court passed an interim order on 31st May, 2022 to the following effect:-

"1. Sri S. B. Pandey, Senior Advocate and Additional Solicitor General of India assisted by Sri Anand Dubey appearing for the opposite parties, on the basis of instructions received from respondent No.2-Medical Counselling Committee (MCC), Ministry of Health and Family Welfare, Government of India, Nirman Bhawan, New Delhi, has informed this Court that the seat allotted to Dr. Sumit Mukherjee, who is said to have resigned, his seat has not been declared to be vacant and still appears to have been retained by him. It is on the strength of the aforesaid facts it is stated that the seat has not fallen vacant in King Georges' Medical University, Lucknow and consequently in the aforesaid circumstances the petitioner cannot be allotted the said seat.

2. Contesting the aforesaid facts, learned counsel for the petitioner has placed reliance on the letter written by King Georges' Medical University, Lucknow to respondent No.2-Medical Counseling Committee (MCC), Ministry of Health and Family Welfare, Government of India, Nirman Bhawan, New

Delhi dated 18.5.2022 informing that Dr. Sumit Mukherjee has resigned from the course of D.M. (Geriatric Medicine & Health) on 27.4.2022 and the petitioner being next in the merit list is entitled for allotment of the said seat.

3. In view of aforesaid facts, learned counsel for the opposite parties pray for and are granted three weeks' time to file counter affidavit. The petitioner shall have two weeks' time thereafter to file rejoinder affidavit.

4. List on 20.7.2022.

5. As an interim measure, it is provided that in case the said seat falls vacant on resignation of Dr. Sumit Mukherjee, the same shall not be filed up by the next date of listing."

It is argued by the petitioner that subsequent to the said order being passed by this Court, the respondents conducted yet another mop-up counselling, however, the seat in question vacated by 6th rank holder was once again not reflected merely on the ground of the interim order passed by this Court on 31st May, 2022.

In the light of the said, the learned counsel for the petitioner argues that the seat, as of now, remains vacant and was not included in the second mop-up round of counselling held in the Month of June, 2022 only on account of the fact that an interim order had been passed by this Court.

It also bears from the record and the stand taken by the respondent no. 3 to the effect that the candidate placed at Serial No. 6 namely, Dr. Sumit Mukharjee had indeed tendered his resignation on 27th April, 2022 and this fact was communicated to the respondent nos. 1 and 2. Specific assertion in this regard has been made in paragraph nos. 9 and 10 in the counter affidavit, which are quoted hereinbelow:-

"9. That at this juncture it is pertinent to mention that one candidate namely Dr. Sumit Mukherjee (AIR 06 and Roll No. 2144117440), who took admission in the course of D.M.,

*Geriatric Mental Health, vide its letter dated 27.04.2022, tendered his resignation. A copy of the letter dated 27.04.2022 is being annexed herein as **Annexure No. SCA-1.***

10. *That it is humbly submitted that Deen Academics, KGMU, vide its letter dated 18.05.2022 informed the Assistant Director General, Medical Counselling Committee (MCC), New Delhi, about the fact that one student namely Dr. Sumit Mukherjee has resigned from the course of D.M. (Geriatric Mental Health). It was also requested that one seat of DM (Geriatric Mental Health) may kindly be included in Mop-Up round of NEET SS-2021. A copy of letter dated 18.05.2022 sent by the Deen Academics, KGMU is being annexed herein as **Annexure No. SCA-2.**"*

Learned counsel for the petitioner argues that in similar circumstances, in a writ petition filed before the Calcutta High Court with a prayer for inclusion of two surrendered/vacant seats of M.Ch. (Urology) in the mop-up counselling, the Calcutta High Court vide its judgment dated 09.06.2022 passed in WPA/9685/2022 (Dr. Arup Mohanta Vs. Union of India and Ors.), directed the respondents to include the vacant seats in the mop-up round of counselling. He further draws my attention to the judgment of the Kerala High Court, which had issued similar directions for including the vacant seats in the mop-up counselling vide order dated 25th May, 2022 passed in WP (C) No. 16404 of 2022 (A). He also relies upon the similar order passed by Karnataka High Court passed on 17.05.2022 in WP No. 9597 of 2022 (Dr. Sharada PB Vs. Union of India).

In the light of the said, learned counsel for the petitioner argues that undisputed fact remains that the candidate placed at Serial No. 6 namely, Dr. Sumit Mukherjee has tendered his resignation and this fact was duly communicated by the respondent no. 3 to the respondent nos. 1 and 2 well within time and prior to the mop-up round of counselling held by the respondents and thus it was incumbent upon the respondents to have included the said seat as vacated by the candidate placed at Serial No. 6 for

the mop-up round of counselling, which was not done for the reasons best known to the respondents. He argues that in the second mop-up round of counselling held in June, 2022, the said seat was once again not included probably because of the order passed by this Court on 31st May, 2022. He, thus, argues that in view of the undisputed facts that one seat remained vacant, entire purpose of selection cannot be frustrated and keep the seat vacant on technical grounds and thus prays that suitable orders be passed and the respondents be directed to conduct special mop-up round of counselling to fill the seat vacated by the candidate placed at Serial No. 6 namely, Dr. Sumit Mukherjee.

Learned counsel for the respondent no. 3 argues that the facts, as narrated by the petitioner, are not disputed. He argues that the fact regarding resignation tendered by Dr. Sumit Mukherjee, the person selected at Serial No. 6, was duly intimated to respondent nos. 1 and 2. He argues that the respondent no. 3 has no role to play in respect of the counselling.

Learned counsel for the respondent nos. 1 and 2 Shri Anand Dwivedi, argues that on the basis of the instructions produced before me that the complete counselling is conducted in an online mode, wherein allotment and admission takes place through the online portal, the colleges themselves filled the admission status of the allotted candidates on the common online portal between the colleges and the M.C.C., however, as there was no option to fill the facts pertaining to the resignation, the intimation given by the respondent no. 3 was not accepted being contrary to the 'no resignation policy' of the M.C.C., as such the seat vacated by Dr. Sumit Mukherjee was not shown as vacant and still appears to be taken by Dr. Sumit Mukherjee. The further stand taken by the respondent nos. 1 and 2 is that if

Dr. Sumit Mukherjee at any point of time wishes to join the said seat, he may join the same within a reasonable period of time, as he is shown to be holding the said seat in the Database of the M.C.C. of DGHS. A further stand has been taken based upon the directions given by the Supreme Court in Writ Petition No. 316 of 2022 to the following effect:-

"10. However, in regard to the alternative prayer, since a second round of counselling has been held at the end of which 940 seats still remain vacant, the Additional Solicitor General has informed the Court that a mop up round of counselling shall be held for those seats including for the stray vacancies, while maintaining the eligibility percentile at 50 for the year 2021-2022."

It has further argued that in terms of the directions given by the Supreme Court in Writ Petition (C) No. 174 of 2022 in the case of **Anjana Chari S. N. v/s MCC & Ors.**, the following directions have been issued:-

"(v) In line with the regulations which have been notified on 5 April 2018, students who have joined in round 2 of the state quota or round 2 of the AIQ shall not be eligible to participate in the mop-up round for All India Quota."

In sum and substances, the argument is that in the record of the MCC of DGHS, Dr. Sumit Mukherjee is still shown to be holding seats of D.M. Geriatric Mental Health in King George's Medical University UP, Lucknow, as such the seat was never included in the mop-up round of counselling either the first or the second round of mop-up counselling, held in the Month of June, 2022.

A stand has also been taken in the subsequent instructions received by the learned counsel for the respondent on 25.06.2022 to the effect that the petitioner could have participated in the mop-up round as well the special mop-up round of counselling and the petitioner did not participate in

either of the said rounds. It has been reiterated that MCC of DGHS does not allow resignation as per the policy.

In the light of the said submissions, learned counsel for the respondents Shri Anand Dwivedi argues that the petition is liable to be dismissed.

On the basis of the arguments placed at the bar, the facts which emerge and are undisputed at the bar are that the petitioner was placed at Serial No. 7 in the merit list prepared, the candidate at Serial No. 6 namely, Dr. Sumit Mukherjee had taken admission and had subsequently resigned after the second round of counselling, vide his resignation dated 27.04.2022. The fact with regard to the resignation of the said candidate was duly intimated by the respondent no. 3 to the respondent nos. 1 and 2, thus the seat which has allotted to Dr. Sumit Mukherjee continues to be remained vacant. The said seat was not included in the vacant seat as there is no facility of including the vacancy arising out of resignation on the portal of the respondents which shows vacancy.

Considering the fact that it is well settled that the seats should not go vacant and should be filled, only on account of the fact that there is no provision contained in the online portal to include the seats vacated on account of resignation, the said technical glitch cannot eradicate the need for fulfilling the seat, which has arisen and remains vacant only on account of technical glitch, the seat has not been filled.

Considering the fact that the seat is clearly vacant, the respondent nos. 1 and 2 are directed to hold special mop-up round of counselling for the said seat vacated by Dr. Sumit Mukherjee in respect of the D.M. Geriatric Mental Health at King George's Medical University UP, Lucknow. The said

exercise is to be carried out in respect of the said seat, as directed above, with all expedition, preferably within a fortnight from today.

The learned counsel for respondent nos. 1 and 2 Shri Anand Dwivedi shall inform the respondents about this order. The petitioner shall also be at liberty to inform the respondents by moving an application in that regard.

The petition is adjourned to 02.08.2022.

The parties shall inform the fate of the order passed today to this Court on the next date.

Order Date :- 16.7.2022
Shafique