IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CWP-33097-2024

Dr. Sushank

…….Petitioner

Versus

Union of India and others

...….Respondents

(2) CWP-33520-2024

Dr. Chandanpreet Kamboj

…….Petitioner

Versus

State of Punjab and others

...….Respondents

Date of decision : 10.01.2025

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE SUDHIR SINGH

Present: Mr. Siddharth Gupta, Advocate,
for the petitioner in both the petitions.

Mr. Anil Chawla, Senior Panel Counsel, UOI,
for respondents No.1 and 4 in CWP-33097-2024 and
for respondent No.4 in CWP-33520-2024.

Mr. Salil Sabhlok, Senior DAG, Punjab in CWP-33520-2024.

Mr. Ravi Sharma, Senior Standing Counsel, MCI,
for respondents No.2 and 3 in both the petitions.

Mr. Aditya Grover, Advocate, for
Mr. Harmanjot Singh Gill, Advocate,
for respondent No.5 in CWP-33097-2024.

Mr. Nitin Kaushal, Advocate,
for respondent No.5 in CWP-33520-2024.

Mr. Aman Bahri, Addl. Standing Counsel, UT Chandigarh, and
Mr. Himanshu Arora, Junior Panel Counsel, UT Chandigarh,
for respondent No.7 in CWP-33520-2024.

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SHEEL NAGU, CHIEF JUSTICE (Oral)

1. This order shall dispose of CWP-33097-2024, titled "Dr. Sushank Vs. Union of India and others" and CWP-33520-2024, titled "Dr. Chandanpreet Kamboj Vs. State of Punjab and others".

2. In CWP-33097-2024, the petitioner is aggrieved by Medical Examination Certificate dated 27/28.11.2024 (Annexure P-14), by which he has been declared 'unfit' by the Medical Board for admission to M.S. General Surgery, a course to be pursued by the petitioner in Pandit Bhagwat Dayal Sharma Post Graduate Institute of Medical Sciences, Rohtak (respondent No.5), while in CWP-33520-2024, challenge is to Certificate of Disability for NEET admissions dated 23.09.2024 (Annexure P-12), whereby the petitioner has been declared 'not eligible' to pursue MD MS Radio Diagnosis course, to be pursued by him in Government Medical College, Patiala (respondent No.6).

3. This Court, while taking cognizance, was apprised of recent decision of the Apex Court rendered in ***Omkar Ramchandra Gond Vs. The Union of India and others,*** 2024 SCC OnLine SC 2860 (Civil Appeal No. 10611 of 2011 decided on 15.10.2024), which *inter alia* in paragraphs 53 concluded thus :

> *"53. For the reasons set out hereinabove,*
>
> *(i) We hold that quantified disability per se will not disentitle a candidate with benchmark disability from being considered for admission to educational institutions. The candidate will be*

eligible, if the Disability Assessment Board opines that notwithstanding the quantified disability the candidate can pursue the course in question. The NMC regulations in the notification of 13.05.2019 read with the Appendix H-1 should, pending the re-formulation by NMC, be read in the light of the holdings in this judgment.

(ii) The Disability Assessment Boards assessing the candidates should positively record whether the disability of the candidate will or will not come in the way of the candidate pursuing the course in question. The Disability Assessment Boards should state reasons in the event of the Disability Assessment Boards concluding that the candidate is not eligible for pursuing the course.

(iii) The Disability Assessment Boards will, pending formulation of appropriate regulations by the NMC, pursuant to the communication of 25.01.2024 by the Ministry of Social Justice and Empowerment, keep in mind the salutary points mentioned in the said communication while forming their opinion.

(iv) *Pending creation of the appellate body, we further direct that* ***such decisions of the Disability Assessment Boards which give a negative opinion for the candidate will be amenable to challenge in judicial review proceedings. The Court seized of the matter in the judicial review proceedings shall refer the case of the candidate to any premier medical institute having the facility, for an independent opinion and relief to the candidate will be***

granted or denied based on the opinion of the said medical institution to which the High Court had referred the matter.

(v) ***We*** *have already, pursuant to our order dated 18.09.2024, in view of the favorable report dated 13.09.2024 of the Maulana Azad Medical College, granted admission to the appellant. We confirm the admission and direct the concerned authorities to treat the admission as a valid admission in the eye of law."*

4. In view of directions issued by the Apex Court in paragraph 53 of the judgment in ***Omkar Ramchandra Gond's case*** (supra), wherein the admitted factual scenario is of absence of any Appellate Body for reviewing the decision of the Medical Board, this Court vide order dated 12.12.2024 directed the Medical Superintendent, PGIMER, Chandigarh, to constitute a Board of Doctors to give opinion as regards physical fitness of both the petitioners for pursuing their respective courses.

5. Accordingly, the opinions given by the Medical Board of PGIMER, Chandigarh, in both the petitions, have been produced in sealed cover, which are taken on record as Mark 'X'.

6. In regard to Dr. Shushank (petitioner in CWP-33097-2024), opinion of the Medical Board of PGIMER, Chandigarh, is to the following extent :

"In pursuance of the orders received from Hon'ble Punjab and Haryana High Court, Chandigarh for medical examination in case No. CWP-33097-2024 in Case titled as Dr. Sushank vs. Union of India & Others, a Medical Board

of the following doctors was constituted vide letter no. EV (9) PGI-MS/MA-63/2024 dated 16.12.2024.

1. Dr. Ajay Savlania, Additional Professor, Department of General Surgery

2. Prof. Sunil Dogra, Department of Dermatology

3. Dr. Mohan Kumar, Associate Professor, Department of Internal Medicine

4. Dr. Uttam Saini, Associate Professor Department of Orthopaedics

5. Dr. Reddi Prudhvi, Senior Medical Officer ATC & Emg., PGI, Chd

Professor Sunil Dogra could not attend the meeting.

In this regard, a meeting of Medical Board members was held on 17.12.2024 at 10.30 a.m. in the MS Office, where Dr. Jerry John from Department of Plastic Surgery and Dr. Jasbir Singh from the Department of Forensic Medicine were co-opted for smooth conduct of examination. On the same day dated 17.12.2024, at 10.30 AM Dr. Sushank (CR) No. 202405320574) reported to MS Office for medical examination.

After proper informed consent, Medical examination of Dr. Sushank has been carried out today dated 17.12.2024 at 10.30 AM.

Following findings were noted on examination

- *He has deformity of partial amputation of right index finger.*
- *He has a well settled stump of right index finger and he is able to use affected finger for daily activities.*
- *He was able to perform surgical knotting smoothly without any hindrance.*
- *When he was asked to perform surgical knotting, he could perform smoothly and had normal grip to hold anything with right hand.*

- *There was no significant hindrance in performing any kind of clinical examination or movements by right hand.*
- *No limitation in the range of motion of the elbow, shoulder, forearm, or wrist of bilateral upper limbs.*

Based on the above examination findings, the Committee is of the opinion that Dr. Sushank may pursue the course of M.S. General Surgery, and the disability would not come in the way of pursuing the course."

As regards Dr. Chandanpreet Kamboj (petitioner in CWP-33520-2024), opinion of the Medical Board of PGIMER, Chandigarh, is to the following extent :

"In pursuance of the orders received from Hon'ble Punjab and Haryana High Court, Chandigarh for medical examination in case No. CWP-33520-2024 in Case titled as Dr. Chandanpreet Kamboj vs. State of Punjab & Others, a Medical Board of the following doctors was constituted vide letter no. EV (9) PGI-MS/MA-63/2024 dated 16.12.2024.

1. Dr. Ajay Savlania, Additional Professor, Department of General Surgery

2. Prof. Sunil Dogra, Department of Dermatology

3. Dr. Mohan Kumar, Associate Professor, Department of Internal Medicine

4. Dr. Uttam Saini, Associate Professor Department of Orthopaedics

5. Dr. Reddi Prudhvi, Senior Medical Officer ATC & Emergency.

Professor Sunil Dogra could not attend the meeting.

In this regard, a meeting of Medical Board members was held on 17.12.2024 at 10.30 a.m. in the MS Office, where Dr. Jerry John from Department of Plastic

Surgery and Dr. Jasbir Singh from the Department of Forensic Medicine were co-opted for smooth conduct of examination. On the same day dated 17.12.2024, at 10.30 AM Dr. Chandanpreet Kamboj (CR No. 202405320612) reported to MS Officer..

After proper informed consent, Medical examination of Dr. Chandanpreet has been carried out today dated 17.12.2024 at 10.30 AM.

Following findings were noted on examination

- *He was a old case of crush injury of left forearm with flap cover.*
- *A well-settled lap on the volar aspect of the left forearm.*
- *There are no wounds or trophic ulceration present.*
- *He is able to demonstrate fine activities with both hands, such as buttoning and unbuttoning clothes.*
- *He is also able to perform weight-bearing activities, such as lifting a chair.*
- *No limitation in the range of motion of the elbow, shoulder, forearm, or wrist of bilateral upper limbs.*

Based on the above examination findings, the Committee is of the opinion that Dr. Chandanpreet Kamboj may pursue the course of M.D. radio diagnosis, and the disability would not come in the way of pursuing the course."

7. In view of above, it has been opined by the Medical Board of PGIMER, Chandigarh, that Dr. Sushank and Dr. Chandanpreet Kamboj (petitioners herein) can pursue M.S. General Surgery and M.D. Radio Diagnosis courses, respectively, and the disability suffered by them would not come in their way to pursue the said courses.

8. In view of the aforesaid medical opinions of the expert body, this Court is left with no option but to allow both these petitions in the following terms :

(i) With regard to Dr. Sushank (petitioner in CWP-33097-2024), it is directed that respondents No.4 and 5 shall grant him admission in M.S. General Surgery course, forthwith;

(ii) As regards Dr. Chandanpreet Kamboj (petitioner in CWP-33520-2024), this Court has already directed vide an interim order dated 12.12.2024 that any admission made against the seat allotted to the petitioner will be subject to outcome of the petition and the concerned Medical College and Hospital shall inform the candidate, who is admitted against the said seat allotted to the petitioner. Learned counsel for respondent No.6 informs that against the seat allotted to the petitioner, Shri Jashanjot Singh has been admitted in M.D. Radio Diagnosis course, and vide email dated 16.12.2024, he was informed that his admission was subject to outcome of CWP-33520-2024. In this backdrop of the factual position, this Court directs that the petitioner be granted admission in the said course, by cancelling admission of Shri Jashanjot Singh, and in view of the email dated 16.12.2024, this Court does not find it appropriate to issue separate notice to Shri Jashanjot Singh before ousting him from the seat allotted to him.

(iii) National Medical Commission is, hereby, directed to ensure creation of Appellate Medical Body, so that instances of such cases do not arise in future.

(iv) It is submitted by learned counsel for the petitioner that Dr. Sushank (petitioner in CWP-33097-2024) has deposited fee twice in first and

second round of counselling, against the same seat. If this submission is found to be correct, then additional fee deposited by the petitioner be returned to him by respondent No.5.

(SHEEL NAGU)
CHIEF JUSTICE

(SUDHIR SINGH)
JUDGE

January 10, 2025
narotam

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