

Court No. - 17

Case :- WRIT - C No. - 1107 of 2022

Petitioner :- Dr. Susmita Yadav

Respondent :- Union Of India Through Its Secretary Ministry Of Health And Family Welfare New Delhi

Counsel for Petitioner :- Santosh Kr. Yadav Warsi, Amit Kumar Gupta, Kafiya, Pooja Pal, Vineet Kumar Yadav

Counsel for Respondent :- A.S.G.I., Gyanendra Kumar Srivastava

Hon'ble Abdul Moin, J.

Heard Shri Santosh Kr. Yadav Warsi, learned counsel appearing for the petitioner, Shri S. B. Pandey, learned Senior Advocate assisted by Shri Ashwini Kumar Singh, learned counsel appearing for the respondents no. 1 & 2 and Shri Gyanendra Kumar Srivastava, learned counsel appearing for the respondents no. 3 & 6.

Issue notice to the respondents no. 4, 5 and 7 returnable at an early date.

The instant writ petition has been filed by a NEET PG qualified candidate having All India Rank of 18849 having obtained 494 out of 800 marks in the said examinations.

The contention of learned counsel for the petitioner is that in the first round of counseling the petitioner has been allocated District Civil Hospital, Maharaja Agrasen, Hisar, Haryana for the programme namely "NBEMS-Diploma-Pediatrics". The copy of the provisional allotment letter is annexure 3 to the petition. The said allotment letter contains a notice for the candidates that the PG-DNB candidates will pay first year fee directly to NBEMS through the link.

It is contended that the fee has also been deposited by the petitioner amounting to Rs 1,47,500/- as per the DNB fee submission, a copy of which is annexure 5 to the petition. The said fee receipt bears the hospitals' name in the course details as "District Civil Hospital, Maharaja Agrasen, Hisar, Haryana".

The course fee session, transaction id and transaction receipt number are also mentioned bearing the transaction date as 25.01.2022.

The petitioner has also placed reliance upon the certificate which has been issued by the Principal Medical Officer, District Civil Hospital, Maharaja Agrasen, Hisar, Haryana dated 28.01.2022 certifying that the petitioner has reported for joining the DNB course at the District Civil Hospital, Hisar on 27.01.2022 and that the petitioner has been registered for the DNB speciality course in the speciality of Pediatrics with effect from 27.01.2022, a copy of which is part of annexure 5 to the petition. The physical joining certificate has also been filed as part of annexure 5 to the petition along with the medical examination report and the document examination.

Learned counsel for the petitioner contends that the joining is to be submitted by her upto 24.02.2022 but she was shocked to see the result of the second round counseling, a copy of which is filed as annexure 1 to the petition, from which it comes out that the aforesaid seat as allotted to the petitioner has now been allotted to the respondent no. 7 by indicating that the petitioner has not reported. A copy of the allotment letter of the respondent no. 7 is annexure 8 to the petition.

The contention of learned counsel for the petitioner is that once the petitioner has already secured admission in the aforesaid District Civil Hospital at Hisar, Haryana after the first round of NEET counseling, has already deposited the fee and the documents have been verified, her joining has been certified by the hospital concerned as such there would be no question of the seat still lying vacant in the second round of counseling and to be allotted to the respondent no. 7.

On the other hand Shri S. B. Pandey, learned Senior Advocate

on the basis of instructions sent by the Office of the MCC, DGHC, New Delhi dated 21.02.2022, which have been passed on to the Court and are taken on record, submits that though it has been indicated in the instructions that the petitioner has been allotted the District Civil Hospital, Maharaja Agrasen, Hisar, Haryana in the round one of NEET PG counseling 2021-22 yet it is after due verification of the documents that the officials of the allocated college was required to update the status of every allotted candidates that report to the college on the intra MCC portal. It has been indicated in the said instructions that the officials of the college have failed to update the status of the petitioner on the said portal which has resulted in the status of the petitioner being shown as "not reported" and thus as per the policy of the NEET counseling any seat that is stated as "not reported" is included in round 2 of the counseling and allotted to other candidates.

Placing reliance on the aforesaid instructions, Shri S B Pandey, learned Senior Advocate contends that once the respondent no. 5 hospital itself has not indicated the status of the petitioner of having reported for her joining consequently there is no error on account of the said seat having been allocated to the respondent no. 7 in the second round of counseling.

Having heard learned counsel for the parties and having perused the record what is prima facie apparent is that the petitioner has been allotted the aforesaid college / institution in the first round of counseling. As per the certificate which has been annexed by the petitioner, the fee has already been deposited, the college concerned has already certified that the petitioner has reported for joining the DNB Course in the institution on 27.01.2022 and a medical examination of the petitioner has also been conducted by the Civil Surgeon at Hisar. Also, from the instructions as sent by the Office of the

MCC, DGHS it comes out that the institution concerned has failed to indicate reporting of the petitioner. Thus, there cannot be any fault on part of the petitioner and thus the seat which has been validly allotted to her in the first round of counselling cannot be said to be vacant so as to be allocated in the second round of the counselling to the respondent no. 7.

Considering the aforesaid a prima facie case for interference is made out. As such the allotment of the seat at District Civil Hospital, Maharaja Agrasen, Hisar, Haryana 125001 as allotted to respondent no. 7 in second round of counselling shall remain stayed till the next date of listing.

It is also provided that as per the certificate of Principal Medical Officer, District Civil Hospital, Maharaja Agrasen, Hisar, Haryana as the petitioner has already reported for joining as such she would be permitted to continue her course in the said institution / hospital.

The Court also prima facie finds that the allotment of the aforesaid seat has been made to the respondent no. 7 pertaining to respondent no. 5 hospital which is arising on account of the information not being sent by the respondent no. 5 institution. The respondent no. 7 has been allotted the said seat on account of the same being shown as vacant as per the instructions sent by the MCC, DGHS. Thus for the fault on the part of the respondent no. 5 of not sending the information the respondent no. 7 also cannot be made to suffer.

Thus considering the aforesaid and balancing the convenience between the parties and in the interest of justice it is provided that the counselling committee i.e. respondent no. 2 would consider the allotment of another seat to the respondent no. 7 as per his merit subject to rules and the counselling schedule.

All the respondents may file counter affidavit within four weeks

to which rejoinder affidavit may be filed within next two weeks.

List thereafter.

A copy of this order shall be provided to the learned counsel for the parties today itself as per the rules.

Shri S. B. Pandey, learned Senior Advocate shall also inform about this order in writing to the respondents no. 1 and 2 and Shri Gyanendra Kumar Srivastava, learned counsel would inform this order in writing to respondents no. 3 & 6 within 24 hours.

Order Date :- 22.2.2022

J.K. Dinkar