

**IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

(Through Video Conferencing)

EMG-WP(C) No. 20-A/2020
EMG-CM No. 06-A/2020

Dr. Showkat Ahmad Bhat

..... Petitioner(s)

Through: -

Mr M. Y. Bhat, Advocate (*On Video Conference from his residence*)

V/s

Union Territory of JK & Ors.

..... Respondent(s)

Through: -

Mr Shah Aamir, AAG (*On Voice Call from his residence*) with
Ms Sharaf Wani, Assisting Counsel (*On Voice Call from her residence*)

CORAM:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge (*On Video Conference from Srinagar wing*)

ORDER

30.04.2020

01. While, Mr. M. Y. Bhat, learned counsel, appearing for the petitioner, has been provided the link and is on VidyoDesktop; Mr. Shah Aamir, learned Additional Advocate General, representing the respondents, is on Voice Call from his residence, assisted by Ms Sharaf Wani, learned Assisting Government counsel, on Voice Call from her residence.

02. On motion hearing, i.e., on 28th of April, 2020, when this matter was taken up for consideration, Mr Shah Aamir, learned Additional Advocate General, had appeared on behalf of the respondents. He had sought and was granted two days' time for filing the objections. Today, objections stand filed on behalf of the respondents, copy whereof supplied to the learned counsel for the petitioner.

03. Mr Bhat, the learned counsel for the petitioner, submits that SRO 48 of 2018, which has been made the basis for declaring the petitioner ineligible vide the impugned notification, bars a candidate for two sessions after first admission and that the date of resignation is absolutely irrelevant. It is submitted that the petitioner is eligible in terms of the said SRO and that the impugned notice is not only uncalled for, but also *ultra-vires* the said SRO. It is pleaded that the SRO aforesaid bars a candidate from seeking admission again for two subsequent sessions after the year of admission, thereby making the total period as three years, i.e., the time of completion of the PG course, and, the petitioner, having been granted admission in the year 2017, was, therefore, precluded and ineligible for seeking second admission in 2017 and for next two years, viz. 2018 and 2019 and barring the petitioner this year also would mean making him ineligible for four years. It is contended that the impugned notification is discriminatory in nature and against the interpretation of law applied by the respondents in the case of some other simulated situated candidates as that of the petitioner by allowing such candidates to join new streams in terms of subsequent selections even when those candidates were already undergoing PG courses. The learned counsel also informs that the petitioner had himself sent an *e-mail* to the respondent-BOPEE on 12th of March, 2020 detailing out all the aforesaid facts, but, much to the dismay of the petitioner, no action with respect thereto was taken by the respondent-BOPEE.

04. Per Contra, Mr Shah Aamir, learned Additional Advocate General, submits that pursuant to the select list notified vide notification dated 2nd of June, 2017, the petitioner joined the course of MD Radio Diagnosis/

Radiology in 2017, whereafter, the petitioner applied for cancellation of admission in 2018 and, accordingly, the admission of the petitioner was cancelled by the concerned authorities vide order dated 10th of July, 2018. It is, thus, stated that the petitioner having left the course of the 2017 batch mid-way is not eligible to seek admission in the year 2020 as per SRO 48 of 2018 dated 30th of January, 2018. It is further submitted that vide communication No. BOPEE/EXAM-12/2020 dated 28th of April, 2020, the BOPEE consulted the Director, SKIMS, regarding the candidates admitted in the year 2017 pursuing the course of PG Radiology, which communication was replied vide communication dated 28th of April, 2020 intimating thereby that ***‘the candidates pursuing PG in Radiology from this institute are still pursuing the course and that the batch is expected to complete the course by the end of May, 2020.’*** It is argued that the afore being the position, the petitioner is barred from seeking admission again as per the provisions of SRO 48 of 2018 dated 30th of January, 2018 and, therefore, the petition of the petitioner is liable to be dismissed on this count alone. It is contended that the instances given by the petitioner of some similarly situated doctors in his petition are examples of the period prior to issuance of SRO 48 of 2018.

05. Having heard the rival contentions of the learned appearing counsel for the parties at length and gone through the pleadings on record, I am of the considered view that the petitioner has made out a case for admitting the writ petition to hearing.

06. Heard. ***Admit.*** Notice.

07. Post admission notice waived by Mr Shah Aamir, learned Additional Advocate General, on behalf of the respondents. He shall file Counter Affidavit with copy in advance to the learned counsel for the petitioner, who shall, thereafter, file Rejoinder to the same. Let this entire process be completed by the next date of hearing.

08. List for hearing on 29th of June, 2020.

09. Meanwhile, the impugned notification bearing No. 19-BOPEE of 2020 dated 17th of April, 2020, insofar as it pertains to the petitioner, shall stay. Further, the respondents shall allow the petitioner for counselling and, consequently, give him provisional admission in the PG seat in question on his own risk and responsibility and, of course, on the basis of merit/ rank attained by him in the selection process as well as satisfying all other conditions of eligibility, which, however, shall be subject to further orders from this Court.

10. Registry to send copy of this order to all the respondents as well as to the learned appearing counsel for the parties through *e-mail*.

SD/-
(Ali Mohammad Magrey)
Judge

SRINAGAR
April 30th, 2020
"TAHIR"

NO:-53/C-19/RJS

Dated:-30.04.2020

Copy of Hon'ble Court Order forwarded to respondents as also to their counsels through email, for information and compliance.

SD/-
Registrar Judicial