

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

EMG-LPA No. 1/2020
EMG-CM No. 1/2020
EMG-CM No. 2/2020
(IN EMG-WP(C) No 11 of 2020)
(Through Video Conferencing)

Board of Professional Entrance Examinations ...Appellant(s)

Through:- Mr. F. A. Natnoo, AAG
(Through Video Call)

v/s

Dr. Sovia Anand and another ... Respondent(s)

Through:- Mr. Pawan Dev Singh, Advocate
(Through Video Call)

**Coram: HON'BLE MR. JUSTICE RAJESH BINDAL, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

ORDER

1. Aggrieved against the interim order passed by the learned Single Judge in the writ petition filed by the respondent, present intra-court appeal has been filed by the appellant.

2. Facts in brief would be enough for disposal of the present appeal as we are not proposing to go into the merits of the controversy as the same may prejudice the case of either of the parties, which is pending adjudication on merits before the learned Single Judge. Suffice to note that the writ petition was filed by the respondent claiming admission in MD course commencing in 2020. The respondent/writ petitioner was earlier admitted in

MD(Pathology) course in the year 2018 but she left the course midway in the year 2019. Now she is seeking admission afresh after clearing NEET-PG(MD/MS)-2020.

3. The objection raised by the appellant is that the respondent is not eligible to get admission during the session commencing in 2020 in view of SRO 48 of 2018, which debars any student to seek admission in MD /MS course for two years, in case the course is left in between.

4. The learned Single Judge finding prima facie merit in the arguments raised by learned counsel for the respondent/writ petitioner admitted the petition and allowed her to participate in the second counselling and directed for grant of provisional admission to her subject to result of the writ petition.

5. The grievance of the appellant is that once the eligibility of the writ petitioner itself was in dispute, the learned Single Judge should not have granted provisional admission to the respondent. The Supreme Court has repeatedly observed that admissions should not be granted in the professional colleges on provisional basis. He further submitted that second counselling is scheduled some time on or after May 26th, 2020, hence, the interim order passed by the Learned Single Judge be stayed and he should be requested to decide the writ petition before that date so that rights of parties are determined finally and none is prejudiced. He further submitted that before the Srinagar bench of this Court in identical matter interim directions were issued by the learned Single Judge and in EMG-LPA No. 36A/2020

filed by the present appellant in that case, while issuing notice in the appeal for June 5, 2020, operation of the impugned order has been stayed. The same course may be adopted in the present appeal also and both the appeals be clubbed for hearing.

6. On the other hand learned counsel for the respondent/writ petitioner submitted that there is no error in the order passed by the learned Single Judge. The argument raised by the appellant is totally misconceived. There is bar of two years to get admission. As the respondent was admitted in the year 2018, she having left the course, is entitled to be considered for admission in 2020. He further submitted that in case interim order passed by the learned Single Judge is stayed and the appeal is adjourned to June 05, 2020, the relief prayed for therein will be rendered infructuous as by that time admissions would be over. However, the learned counsel was not averse to the suggestion of the learned counsel for the appellant in final disposal of the writ petition before the second round of counselling takes place.

7. Heard learned counsels for the parties through video call and perused the paper book. In our opinion the issues raised in the present appeal are not such which need to be adjudicated upon by this bench as the matter is still pending consideration on merits before the learned Single Judge. The challenge in the appeal to an interim order passed by the learned Single Judge whereby has provisionally permitted the respondent to participate in the counselling for admission to MD course in session commencing in 2020 and grant her admission, however, at her own risk and responsibility. The

fact remains that grant of admissions in professional colleges by interim orders has been deprecated by Supreme Court. In case finally the petition is to be dismissed, right of an eligible candidate is violated as he/she is deprived of the admission because of interim order passed by the court. The right course in our view, in the facts of the present case would be to set-aside the interim order passed by the learned Single Judge and remit the matter back to him with a request to decide the writ petition itself on merits before May 26, 2020, as is stated to be the date fixed for second counselling, in which the respondent has been permitted to participate. However, final date of disposal may depend on the date fixed for second counselling, as learned counsel for the appellant was not confirmed about the same.

8. For the reasons stated above we set-aside the impugned interim order dated May 11, 2020 and dispose of the present appeal with a request to learned Single Judge to take up the writ petition and finally dispose of the same on or before May 26, 2020, so that rights of none of the parties are prejudiced.

9. The date of hearing in the writ petition is preponed from June 01, 2020, with the consent of the parties and the same is directed to be listed on May 19, 2020.

10. Before parting with the order, we would like to make a reference to the orders passed by the learned Single Judge in EMG-WP(C) No 20A of 2020 and Division Bench in EMG-LPA No. 36A/2020, pertaining to the same issue. Though the aforesaid LPA is stated to be listed before the DB on

June 05, 2020, and interim order passed by the learned Single Judge therein has been stayed but the writ petition pending before the learned Single Judge can be and in our opinion should be heard and disposed of finally before the process of admissions close so that neither the appellant nor the respondents nor any of the candidate, whose right may be affected, suffers. It would further be appropriate, if both the matters are listed before the same bench. For the purpose let the matter be placed before Hon'ble the Chief Justice for passing appropriate orders.

11. The appeal is disposed of accordingly.

Jammu
18.05.2020
Paramjeet



(PUNEET GUPTA)
JUDGE

(RAJESH BINDAL)
JUDGE

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No