

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

(Through Video Conference)

Reserved on : 20.05.2020.

Pronounced on : 26.05.2020.

EMG-WP(C) No. 11/2020,
EMG-CM No. 20/2020.

Dr. Sovia Anand

.....Petitioner (s)

Through :- Mr. Pawan Dev Singh, Advocate
(on Video Call from residence in Jammu)

V/s

B.O.P.E.E. and another

.....Respondent(s)

Through :- Mr. F. A. Natnoo, AAG for respondent
No. 1
(on Video Call from residence in Jammu)

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGEMENT

01. The petitioner completed PG Diploma Course in Pathology stream from GMC, Jammu in the year 2017 and after her selection in PG (MD) Pathology, GMC Jammu obtained admission for PG (MD) in Pathology stream in GMC, Jammu, pursuant to the notification No. 28-BOPEE-2018 dated 01.05.2018. The petitioner joined the said course on 03.05.2018.

02. The petitioner resigned the said course midway and her admission was cancelled with effect from 24.05.2019. Thereafter, the petitioner appeared

in NEET-PG-2020 for the Selection to MD/MS/PG Diploma courses for the Sessions 2020 and secured a place in merit list in General Category with score of 445. It is stated that the respondents have notified the dates for counseling of candidates who have figured in the merit list but the respondent No. 1 has refused to conduct the counseling of the petitioner in view of the bar contained in SRO-48 dated 30.01.2018. The petitioner states that she filed representation with the respondent No.1 to allow her to participate in the counseling but to no effect. It is further case of the petitioner that she has a right to be admitted in PG(MD/MS) Course for session 2020, as she would have completed the course by the end of April, 2020 but due to COVID-19 pandemic the examinations have not been conducted. She further states that the duration of the course that she left was two years for her, as she had earlier undergone diploma in the same Stream. The respondents are wrongly interpreting the provisions of SRO-48 of 2018 and as such she has filed the present writ petition whereby she has prayed for issuance of writ of mandamus for issuance of directions to the respondents to admit the petitioner for PG(MD/MS) Course 2020 in a State Medical Institution in the specialty, which is allotted to her after the counseling as per her merit in NEET-PG-2020 conducted by the National Board of Examination (NBE).

03. The respondent No.1 has filed the objections as well as supplementary affidavit. The respondent No.2 has adopted the stand of the respondent No.1. The respondent No. 1 has stated that the petitioner is not eligible to compete for selection to MD/MS PG Diploma Course for session 2020 because of her leaving the course midway and normal period under which the petitioner could have completed the course, had the petitioner not left the

course, was yet to be completed. It is further stated that as per the scheme of examination, completion of the course includes period of examination which normally is conducted in May-June every year. Moreover, the co-selectees of the petitioner of session 2018 are still pursuing their course as per the information provided by the Principal, GMC Jammu vide letter dated 15.04.20 bearing no: GMC/PG/59. It is also submitted that the select list was published on 03.05.2020 but the petitioner has not challenged the same. It is further stated in the objections that the NBE had issued a notification calling upon the candidates to register themselves through online submission of application with effect from 01.11.2019 to 21.11.2019. The date of conduct of examination was shown as 05.01.2020 and date of declaration of result was shown as 31.01.2020 but the result was infact declared on 30.01.2020. Further, J&K BOPEE vide notice dated 25.02.2020 and 26.02.2020, on the basis of the result issued by the NBE, asked the candidates to remain in touch with BOPEE website regularly and to keep all the documents ready for registration. Vide another notice dated 06.03.2020 bearing No. 07-BOPEE of 2020, the respondent No. 1 issued various instructions to the candidates thereby reiterating the conditions of eligibility and one of the eligibility condition in term of Condition No. 12 of the said notification provided that candidates who have left the course midway and resigned after the last date fixed by the Board, they shall not be eligible for consideration notwithstanding their merit and having qualified the examination. Vide another notification No. 008-BOPEE of 2020 dated 06.03.02020, the BOPEE called for online registration of eligible candidates for preparation of provisional merit list which was to commence with effect from 13.03.2020 and the last date was continued to be extended till 29.03.2020. It is further stated in

the objections that on the basis of online registration of candidates and also after rejection of candidature of those candidates who though ineligible and have registered themselves but could be identified by the BOPEE as ineligible in terms of SRO-48 of 2018 and other provisions of law, provisional merit list of the candidates was issued vide notification No. 07-BOPEE of 2020 dated 10.04.2020. Vide notification No. 08-BOPEE of 2020 dated 17.04.2020 online preferences of candidates for allotment of seats were called with effect from 21.04.2020 till 27.04.2020, that was later on extended up to 29.04.2020 and after considering the preferences of the candidates for various seats and also merit of the candidates, the BOPEE issued the select list of candidates for Session 2020 vide notification No. 009-BOPEE-2020 dated 03.05.2020. It was also stated that the respondent No. 1 has rejected the representation of the petitioner. The respondent No. 1 as such prayed for the dismissal of the writ petition.

04. Heard learned counsel for the parties and I have also perused all the documents relied upon by all the parties.

05. SRO-48 of 2018 substituted the 2nd proviso to sub-clause(v) of clause 3 of J&K Government Medical Colleges (Selection of candidates for Post Graduation Degree and Diploma Courses) Procedure Order 1995 and it would be profitable to reproduce the relevant part of provisions of SRO-48 dated 30.01.2018 and the same is reproduced as under:-

“provided further that the doctors who are doing post-graduation/diploma courses in any specialty at the Government expenses including those who leave the course midway after cut-off date of admission shall not be

eligible to apply for undergoing post-graduation courses in any other specialty in the State Medical Institutions till completion of their Post-Graduation/Diploma courses, as the case may be. In case of candidates having left the course midway after taking admission they shall be barred from seeking admission again until they would have normally completed the course had they not left it midway.

06. The learned counsel for the petitioner has laid much stress on the later part of the proviso that provides that “*in case of candidates having left the course midway after taking admission, they shall be barred from seeking admission again until they would have normally completed the course had they not left it midway*”. Learned counsel for the petitioner contends that but for COVID-19 pandemic, the petitioner would have completed her course having duration of two years by the end of April, 2020 as the petitioner had obtained admission in May, 2018, had she not left the course midway. So the petitioner has every right to seek admission for undergoing MD/MS Course for session 2020 but the respondent No. 1 is wrongly applying the bar contemplated by SRO-48 of 2018 in case of petitioner.

07. On the contrary Mr. Natnoo, learned AAG has vehemently argued that the selection process was started in November, 2019, so the petitioner was not competent to even apply and seek admission for MD/MS PG Course for session 2020. He further submits that the proviso in question of SRO-48 of 2018 is required to be read as a whole and also that later part of the proviso in question is merely explanatory in nature.

08. The literal interpretation of the first part of the proviso in question makes it clear that it makes both categories of doctors, who are either doing Post Graduation/Diploma courses in any specialty at the Government expenses or who have left the course midway after the cut-off date of admission, ineligible to apply for undergoing Post Graduation courses in any other specialty till the completion of their course for which they had sought admission. The duration of disqualification for applying again for PG Course, exists in the first part of the proviso, so far as the doctors who are undergoing Post Graduation or Diploma course in any specialty are concerned. But in order to provide the duration of disqualification for seeking admission again for the candidates who have left the course midway after the cut-off date in more explicit manner, the later part of the proviso in question has been added. The proviso in question is required to be read in its entirety and not in parts. Thus it is clear that the doctors who are undergoing MD/MS/PG courses in any discipline cannot apply for undergoing Post Graduation courses in any other specialty till the completion of the course and likewise, the candidates who have left the course midway after the cut-off date, without completing the MD/MS Diploma for which they had taken admission, also cannot apply and seek admission till the period by which candidate's course that he left would have completed. Thus, the bar as contemplated by the proviso in question is co-terminus with the duration of the course, is for both categories of doctors, who are either doing PG/Diploma course in any specialty or who have left the course midway.

09. The purposive interpretation of the proviso in question of SRO-48 of 2018 would reveal that the proviso was introduced to discourage/prevent the candidates from abandoning the Course without completing it and also otherwise it would deprive the other eligible candidates to seek admission. In this context the judgment of Apex Court in case titled “**Mabel v/s State of Haryana**” reported in 2002(6) SCC 318 is required to be taken note of, in which while interpreting the particular Clause of Information Brochure, the Supreme Court has held.

“It will be useful to refer to Cl. 18 which reads as under :-

18. The candidates already admitted in any Medical/Dental Colleges will not be considered eligible for admission to the course.

A plain reading of the aforementioned clause shows that a candidate who was already admitted in a medical or dental college would be ineligible for admission in the other course. The said clause at times will operate harshly as in the case of the petitioner but it is meant to ensure that a candidate who has already secured admission should not abandon the studies after the commencement of that course to seek admission in another course which is in public interest, for otherwise it would result in the wastage of the seat in the course in which he has taken admission and further such a change would deprive another eligible candidate from seeking admission to the other course. Obviously, the intention of the concerned authority in framing Cl.18 appears to be to ensure that a candidate who has already secured admission with his free will in any

course (MBBS or BDS) should complete that course and should not change his mind in midstream. It, therefore, follows that the bar is intended to be operative during the period of the course in which a candidate has taken admission. After completing that course or in the event of abandoning the course (MBBS/BDS) and not studying for the normal period (4 years/5 years as the case may be) the candidate would become eligible after the end of such period of the course to seek admission in the course of his choice provided other conditions of admission are satisfied. In other words, the bar under Cl. 18 in this case will cease after the BDS course for the academic year 2000-2001, in which the petitioner has taken admission comes to an end after 5 years."

Thus any other interpretation would be contrary to the spirit behind the proviso.

10. In the present case, the NBE initiated selection process in the month of November, 2019 and last date for filing of application was 21.11.2019. The examination was held on 05.01.2020 and the result was declared on 30.01.2020. The note 5 of the notice dated 30.01.2020 for declaration of results by the NBE is reproduced as under:-

"The merit position for All India 50% quota seats shall be declared separately. The final merit list/category wise merit list for State quota seats shall be generated by the States/UT as per their qualifying/eligibility criteria, applicable guidelines, regulations and reservation policy."

11. The note makes it clear that so far as State quota seats are concerned, they are required to be filled as per their qualifying/eligibility criteria of States/UTs. The petitioner as such is bound by the qualifying/eligibility criteria of the UT of Jammu & Kashmir. SRO-48 dated 30.01.2018 was in vogue when the selection process was started in the month of November, 2019 and the petitioner as such was not competent to apply in the year 2019 to seek admission for MD/MS/PG Diploma for Session 2020 so far as Medical Institutions of UT of J&K are concerned, because her course was to be completed in the month of April-May, 2020, had she not left the course midway. The petitioner was not even eligible to apply and seek admission even when the BOPEE after the declaration of the result by the NBE, asked the candidates belonging to UTs of J&K and Ladakh to keep all the relevant documents ready for registration vide notification bearing No. 001-BOPEE of 2020 dated 25.02.2020 and also when the eligible candidates were called for online registration for preparation of Provisional Merit List vide Notification no: 008-BOPEE of 2020 dated 6-3-2020 by J&K BOPEE, because her course was to be completed in the month of April-May, 2020, had she not left the course midway.

12. Thus it is clear that the petitioner had no right to participate in the selection process and seek admission for undergoing MD/MS/PG Diploma Courses – 2020 in the Medical Institutions of UT of Jammu & Kashmir, as per the mandate of SRO-48 of 2018 as she would have normally completed her course by the end of May, 2020, had she not left the course without completing it. The contention of the petitioner that if she was not eligible to participate in the Selection Process then why she was permitted to sit in examination is also

without merit, as the NBE conducts examination not only for Seats under STATES/UT Quota Seats but also for the Seats under All India Quota Seats.

13. Viewed thus, the petition deserves to be dismissed and is, accordingly, **dismissed** along with connected application.

(RAJNESH OSWAL)
JUDGE

Jammu
26.05.2020
(Muneesh)

Whether the order is speaking : **YES**

Whether the order is reportable : **YES**

