

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

EMG-WP(C) No. 30-A/2020  
EMG-CM-34-A/2020  
EMG-CM-35-A/2020

**Pronounced on:- 28.05.2020**

Dr. Sabina Syed

....Petitioner(s)

Through: Mr. M. Y. Bhat, Advocate  
(through WhatsApp video call)

**vs.**

U.T. of J&K and ors.

....Respondent(s)

Through: Mr. Shah Amir, AAG with  
Ms. Sharaf Wani, Assisting Govt.  
Counsel  
(through WhatsApp video call)

**CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE**

**JUDGMENT**

1. Petitioner, a Doctor had applied and was selected in National Eligibility-cum-Entrance Test (NEET-PG) of 2020 for admission to MD/MS/Post Graduate Diploma Course. The Jammu and Kashmir Board of Professional Entrance Examination (hereinafter referred to as BOPEE) vide its order dated 17.04.2020 declared her ineligible for consideration for admission for session 2020 in terms of SRO 48 of 2018.
2. The case of the petitioner is that, she was earlier selected for Post Graduate Diploma Course in Pathology in GMC, Jammu 2018 which she joined. Her submission is that she has completed this course, which she had joined in 2018 as the duration of the academic course is only of two years. She has also deposited her fee for final exams which have been delayed, therefore, she is eligible for admission to

PG Course 2020.

3. The respondents in their reply have stated that the petitioner is ineligible to be considered for admission in view of bar created by SRO 48 dated 30.01.2018, as she is still pursuing her Post Graduate Course in Pathology at Government Medical College, Jammu. Thus, she is ineligible to apply till completion of the course. Since she would complete her course only after final examinations are held, and Diploma/Degree is awarded, therefore, she was rightly declared ineligible for admission.
4. Respondents submit that petitioner has appeared at her own risk in the PG exam knowing fully well that she was not eligible. They have placed reliance on the information brochure of NEET test for admission in MD/MS/PG Courses for the session 2020. In terms of the eligibility criteria, wherein it is stated that NEET-PG does not confer any automatic right upon the candidate for admission in medical institutions for MD/MS/PG Diploma Courses, therefore, they seek dismissal of this petition.
5. Thus, the only question for determination is whether the petitioner has rightly been denied admission to Post Graduate Course, 2020. SRO 48 of 2018 dated 30<sup>th</sup> Jan, 2018 which is basis of rejection is extracted below:

“(1) 2<sup>nd</sup> proviso to sub clause (v) of clause 3 shall be substituted by the following:-

“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 of 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.”

6. SRO 48 of 2018 clearly states that those doctors, who are doing post graduate/diploma courses, in any specialty including those, who leave the course midway, shall not be eligible to apply for undergone post graduate course in any specialty till completion of their course., therefore, the petitioner was ineligible to apply for the PG course till the completion of her course which would be only after her exams were conducted and degree/diploma was awarded.
7. This apart, petitioner in Para-3 of her petition has stated that she has completed the course, however, the Principal & Dean, Government Medical College, Jammu vide his letter dated 15.04.2020 in reference to the letter of BOPEE regarding status of the candidates, has informed that the petitioner is still pursuing her PG diploma in Pathology. Thus, the case of the petitioner is squarely covered under SRO 48 of 2018 and she has been rightly declared ineligible.
8. Although the petitioner has not challenged the legality of SRO 48 of 2018 but there is a passing reference to it, that SRO 158 of 1995 dated 12.07.1995 was issued under section 5 of the Constitution of J&K which stands repealed and therefore the amendment of the provision is meaningless because SRO 158 of 1995 dated 12.07.1995 does not survive with the repeal of the Constitution.
9. The Jammu and Kashmir Re-organization Act, 2019, Rules 13 and 14

specifically saves the Rules and Instructions under any of the laws which have been repealed. Therefore, SRO 158 of 1995 dated 12.07.1995 has been rightly amended during the subsistence of the Constitution.

10. Lastly, it is submitted that certain other doctors who were similarly situated were granted admission by the respondents earlier but the same is denied to her, thus, the impugned notification is discriminatory and same benefit should have been extended to her also. The law however is well settled that equality is positive concept and cannot be enforced in a negative manner to confer the benefit which has been illegally extended to others as held in **State of West Bengal & ors. Vs. Debasish Mukherjee And Ors, AIR 2011 SC 3667**, the Hon'ble Supreme Court has held as under: -

“21. It is now well settled that guarantee of equality before law is a positive concept and cannot be enforced in a negative manner. If an illegality or an irregularity has been committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of Courts and Tribunals to require the state to commit the same irregularity or illegality in their favour on the reasoning that they have been denied the benefits which have been illegally or arbitrarily extended to others.”

11. Thus, in view of the aforesaid discussion, there is no merit in this petition and is accordingly **dismissed** alongwith all the connected CMs.

**(Sindhu Sharma)**  
**Judge**

**SRINAGAR**  
28.05.2020  
SUNIL-II

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