

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

EMG-WP(C) No. 35-A/2020
EMG-CM-28-A/2020
EMG-CM-36-A/2020

Pronounced on:-28th .05.2020

Dr. Shafket Rasool WaniPetitioner(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 by profession was selected for Post Graduate Diploma Course in Government Medical College, Jammu in Pediatrics vide notification No. 28-BOPEE of 2018 dated 01.05.2018. He had joined the Post Graduate Diploma in Pediatrics and admittedly left the course after some months. Principal & Dean, Government Medical College, Jammu vide his order dated 27.04.2020 has cancelled petitioner's admission stating that he has been absent from duty w.e.f 21.10.2018, this order has been annexed by him with the petition.
2. Petitioner again appeared for NEET-PG of 2020 and secured 188th Rank in Union Territory of Jammu and Kashmir, however, since he had left the Diploma Course in midway before completion, the Board of Profession Entrance Examination denied admission to the petitioner on the basis of SRO 48 dated 30.01.2018.

3. He has challenged this notification of the Board dated 17.04.2020 holding him ineligible for admission to the Course of MD in view of the SRO 48 dated 30.01.2018. The only question involved for determination is whether the petitioner has been rightly denied admission to the Post Graduate Course for the session 2020.
4. The petitioner in para 3 of his petition has stated that his admission was cancelled, he has also placed on record order of cancellation of his admission dated 27.04.2020, therefore, his plea that he resigned from the Course is not correct. The fact is that he joined the Course which commenced on 01.05.2018 but abandoned the same w.e.f. 21.10.2018, therefore, earned the disqualification for taking up new Course in terms of SRO 48 proviso-1 which reads as under:

“(1) 2nd 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.”

5. Petitioner, thus, has clearly incurred the disqualification in view of the last sentence of the Provision which says 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. It is not denied that

Diploma Course in Pediatrics is of two years which means he could have completed the Course only sometime in May, 2020, however, according to the respondents the Course in which he was admitted in 2018 is yet to complete the course and, therefore, he is ineligible to apply for seeking admission to PG course.

6. The grievance of the petitioner is that selection process for admission to Post Graduate Course 2020 is yet to be completed, though the first list of selected candidates was issued by BOPEE on 10.04.2020. The stand of respondent-BOPEE is that, firstly, the petitioner is not eligible in view of the SRO 48 dated 30.01.2018, secondly, that Hon'ble the Supreme Court in case '**Mbel v. State of Haryana and others, AIR 2002 SC 2772** deprecated the tendency of a candidate who after securing admission abandoned the same after commencement of the course. So far as these grounds are concerned, they are covered by the SRO 48 of 2018 and the law laid down by Hon'ble the Supreme Court. Thus, case of the petitioner securely falls under both these categories.
7. The National Board of Examination which conducts NEET-PG Examination has notified as under:

"Some of the Universities/institutions are having regulations that candidates who are already pursuing the PG Course in their University or in another University are not eligible for admission till they complete the course, The candidates who are already pursuing PG Courses either through All India Quota or State Quota and are applying for a seat under All India Quota/State quota seats may confirm the eligibility conditions of that University in this regard. NBE/MCC/MoHFW shall not be responsible if such candidates are refused for admission. Such candidates may opt for the subject and the college at their own risk and cost."

The petitioner has thus taken risk for appearing in the examination knowing fully well that having abandoned the course, and not completed the requisite period of the course as required, he thus was ineligible to apply for seeking admission.

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 President of India has issued order called the Jammu and Kashmir Re-organization (Removal of Difficulties) Order, 2019 under section 103 of the Jammu and Kashmir Re-organization Act, 2019. Rule 13 and 14 specifically save 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. The petitioner has named certain Doctors who despite having abandoned their courses midway were granted admission to the new course without taking into consideration their ineligibility and thus, seeks same consideration. Since they were not entitled to admission, therefore, Article-14 would not be attracted to confer the same benefit to the petitioner. 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. 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