

(2021) 12 DEL CK 0090

In the Delhi High Court

Case No : Civil Writ Petition No. 10229 Of 2021

Radhika Ashar And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 13-12-2021

Acts Referred:

Citation : (2021) 12 DEL CK 0090

Hon'ble Judges : Prateek Jalan, J

Bench : Single Bench

Advocate : Manoj Khanna, Aakriti Mittal, Apoorv Kurup, Nidhi Mittal, Sanjay Khanna, Archana Pathak Dave, Parmod Kumar Vishnoi, Avnish Dave

Final Decision : Disposed Of

Judgement

Prateek Jalan, J

1. The petitioners are candidates for admission to postgraduate AYUSH courses. They are students of the Bachelors Degree courses [BUMS/BAMS/BSMS/BHMS] and have taken the All India Ayush Postgraduate Entrance Test, 2021 ["AIAPGET-2021"] on 18.09.2021.

Their grievance in this writ petition is that the eligibility qualifications for the postgraduate courses provides for completion of compulsory one year rotating internship [which is part of the bachelors degree course] by 31.12.2021, whereas the petitioners will complete their internships only in January, 2022.

2. The National Testing Agency [respondent No. 3] called for applications for the AIAPGET-2021 by a public notice dated 03.08.2021. An information bulletin was also published, in which the eligibility condition with regard to internship was laid down in paragraph 5.3, which reads as follows:-

"5.3 The dates indicated by candidates in regard to 12 months Compulsory Rotating Internship i.e. starting date, completion date, shall be treated as final and candidates will be required to submit the original Compulsory Rotating

Internship completion certificate at the time of counselling.

The cut-off date for completion of internship towards determination of eligibility for appearing in AIAPGET-2021 shall be 31st October 2021." Emphasis supplied.

The date of 31.10.2021 provided therein has been extended to 31.12.2021, by a notice dated 16.08.2021, issued by the Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy, Government of India ["the Ministry"].

3. Mr. Manoj Khanna, learned counsel for the petitioners, submits that the petitioners have secured meritorious ranks in the AIAPGET-2021, but will be unable to qualify for the postgraduate courses unless some flexibility is shown in the last date of completion of internships. He submits that the petitioners' internships were delayed by reasons arising out of Covid-19 pandemic, as the issuance of their provisional degree certificates was delayed by the concerned universities. Mr. Khanna further points out that the counselling for admission to postgraduate courses has been delayed by virtue of orders passed by the Supreme Court in proceedings filed by Economically Weaker Section category candidates [W.P.(C) 961/2021: Neil Aurelio Nunes & Ors. vs. Union of India & Ors.].

4. Mr. Apoorv Kurup, learned counsel for the respondent no.1-Union of India ["UOI"], submits that the petitioners had earlier approached this Court for similar relief in W.P.(C) 8687/2021 [Radhika Ashar vs. Union of India], which was disposed of on 18.08.2021, directing the UOI to consider the request, treating the writ petition as a representation. In the order dated 18.08.2021, it was recorded as follows:-

"2. Mr. Manoj Khanna, learned counsel for the petitioners, contends that the date for the post-graduate entrance examination has not yet been fixed. However, by an order dated 16.08.2021 issued by the respondent No. 2-Ministry of Ayush, Government of India ["the Ministry"], the last date for completion of internships, which is an eligibility condition for admission to the post-graduate courses, has been extended until 31.12.2021. The petitioners herein seek extension of that date until 31.01.2022 as they will be completing their internships during the month of January, 2022.

3. After some hearing, Mr. Khanna submits that the relief sought may be considered by the Ministry, in consultation with the other respondents as considered necessary.

4. The respondents are not represented. However, at my request, Ms. Archana Pathak Dave, learned counsel for the National Commission for Indian System of Medicine ["NCISM"], has entered appearance. The writ petition is disposed of with a direction upon the Ministry to consider the petitioners' request, treating the writ petition as a representation. Ms. Dave is requested to communicate this order to the concerned authorities of the respondents. The Ministry may also

consider the petitioners" request for extension of the last date for filling of the forms for admission to post-graduate courses. It is made clear that this Court has not adjudicated upon the merits of the petitioners" case."

5. The petitioner filed a representation dated 26.08.2021 consequent upon this order, which has been disposed of by the UOI's communication dated 27.08.2021, recording as follows:-

"6. The Ministry of Ayush has already considered this issue and extended the cut-off date upto 31.12.2021 & further extension of cut-off date of completion of internship will cause further delay in the admission and commencement of session. Further extension of cut-off date will become a never ending process as at any cut-off date some of students are found not fulfilling the criterion of internship. It will also jeopardize the interest of many students who have completed their internship within time." Emphasis supplied.

The petitioners made a further representation dated 03.09.2021, which was disposed of by the UOI on 30.09.2021, recording that the request could not be accepted.

6. While the petitioners' second representation was pending with the UOI, the petitioners filed the present writ petition for the following reliefs:

"a. Issue a writ of mandamus or any other appropriate writ(s), order(s), direction(s) directing the respondents to allow the petitioners to appear in the AIAPGET-2021 entrance examination to be held on 18.09.2021 with the liberty to submit the Compulsory One Year Rotating Internship Certificate at the time of counselling; and

b. Pass any other order/directions as this Hon"ble Court may deem fit and proper in the interests of justice. "

7. Having heard learned counsel for the parties, I am of the view that the relief sought by the petitioners cannot be granted by the writ court. The eligibility criteria were clearly laid down in the information bulletin, and an extension of time has also been granted by the notice of the Ministry dated 16.08.2021. Unfortunately, the petitioners would not have completed their internships even within the extended time. However, that by itself does not demonstrate manifest arbitrariness or unreasonableness in the decision of the UOI. There is some randomness in the fixation of cut-off dates, by their very nature, and there will unfortunately, always be some candidates who suffer hardship as a result. If the relief sought by the petitioners is granted, there may still be candidates who are short of completing their internships by few days. The Court cannot mandate such an endless exercise. The decisions of the Supreme Court in *University Grants Commission vs. Sadhana Chaudhary And Others* (1996) 10 SCC 536 [paragraph 21] and *Hirandra Kumar vs. High Court of Judicature at Allahabad and Another* 2019 SCC OnLine SC 254 {W.P.(C) 1343/2018; decided on 29.01.2019} [paragraph 23] may be referred to in this connection.

8. Mr. Khanna relies upon the following paragraph in the communication of the UOI dated 30.09.2021 in support of his contention that the petitioners and similarly placed candidates are also entitled to consideration:

"3. In view of the above, it is understood that, to get admission in PG courses, the candidate should possess undergraduate degree with enrollment in Central or State Register of Indian System of Medicine. However, the Ministry declares cut-off date of completion of Internship towards determination of eligibility for appearing in AIAPGET-2021, so that internship going students may appear in AIAPGET Examination."

9. Mr. Khanna emphasises that the purpose of cut-off date is to enable internship going students to appear in the AIAPGET-2021. He submits that this benefit should enure to the petitioners also. I am not persuaded by this argument. The fixation of the cut-off date enables a number of students, who are still undergoing internship, to participate in the examination and secure place in postgraduate courses. Mr. Khanna's argument is that all internship going students must be given the benefit of participating in the examination and taking part in the postgraduate courses that year. This is not borne out by a reading of the communication dated 30.09.2021, and such a situation is in any event, untenable. The logical conclusion of such a finding would be that anyone who has commenced the internship before a particular date is entitled to admission in the postgraduate courses in the given year, and would not be dependent upon the date of completion of internship at all. This is not, in my view, the correct way of reading the eligibility conditions or the communication dated 30.09.2021.

10. It may be mentioned that I have taken the same view in a judgment dated 18.08.2021 [Sh Arman Sindhu vs. Union of India & Ors [W.P.(C) 8429/2021]], also relating to extension of the cut-off date for completion of internship. The judgments of this Court in Ojasvini Agrawal vs. Union of India [Judgment dated 27.05.2020 of the Division Bench in LPA 147/2020, affirming the judgment of the learned Single Judge dated 13.05.2020 in W.P.(C) 3054/2020] and of the Madras High Court in GA Vishwajeet vs. Union of India W.P.(C) 16526/2021; decided on 09.08.2021 and Others, were followed to decline relief to the petitioner therein.

11. For the aforesaid reasons, I am of the view that the relief sought in this writ petition cannot be granted. However, this order will not come in the way of the UOI taking a fresh decision in view of the revised schedule for counselling, subject to the orders of the Supreme Court in the aforementioned proceedings.

12. The writ petition is disposed of in the aforesaid terms. There will be no order as to costs.