

**THE HIGH COURT OF MADHYA PRADESH, JABALPUR**

**Writ Petition** : **13514 of 2016**  
**Parties Name** : Dr. Shraddha Saxena  
  
**Versus**  
  
State of M.P. & others  
**Bench Constituted** : Hon'ble Shri Justice R.S. Jha &  
Hon'ble Shri Justice Mohd. Fahim  
Anwar, JJ.  
**Judgment delivered by** : **Hon'ble Shri Justice R.S. Jha**  
**Whether approved for reporting** : Yes/No  
**Name of counsel for parties** : **For Petitioner:** Shri Aditya Sanghi,  
Advocate  
  
**For respondents** : Shri Piyush  
Dharmadhikari, Govt. Advocate  
  
**Law laid down** :  
**Significant paragraph numbers** :

**O R D E R**  
**(19/07/2018)**

**Per: R.S. Jha, J.**

**1.** The petitioner has filed this petition being aggrieved by the order of cancellation of her admission and has prayed for quashing the impugned order dated 3/4.08.2016 (Annexure P/12) with a further direction to permit the petitioner to continue and complete her diploma course in Anesthesia at Netaji Subhash Chandra Bose Medical College, Jabalpur. The petitioner has also prayed for declaring Rule 4(1)(c) and Rule 5 of the Madhya Pradesh Medical and Dental Post Graduate

Course Admission Rules (Degree/Diploma), 2014 (hereinafter referred to as 'the Admission Rules of 2014') as ultra vires.

**2.** The brief facts, leading to the filing of the present petition, are that the petitioner on being successful in the Post Graduate Entrance Examination was allotted the Post Graduate Course of Diploma in Anesthesia at Netaji Subhash Chandra Bose Medical College, Jabalpur on 01.08.2014. The petitioner joined the said course on 06.08.2014 and immediately on the next day i.e. 07.08.2014 she filed an application requesting for six months' maternity leave. The petitioner thereafter proceeded on leave and ultimately gave birth to a baby boy on 09.11.2014. It is stated by the petitioner that the child born to her was underweight and immediately after birth the child was diagnosed with neonatal jaundice on account of which the child was kept under treatment upto 15.11.2014. It is stated that the jaundice, from which the child was suffering, was required to be treated intensively and this treatment was continued upto February, 2015.

**3.** It is stated that thereafter the petitioner filed an application for medical leave before the authority on 04.02.2015 which was forwarded by the Head of the Department on 15.02.2015 and again on 23.03.2015, 23.04.2015 and 24.5.2015 seeking extension of medical leave

by one month. On 01.6.2015 the petitioner submitted an application alongwith a certificate of fitness seeking permission to rejoin the course.

**4.** It is submitted that by a decision of the Post Graduate Committee of the College, the petitioner was permitted to continue her course by order dated 30.07.2015 subject to her furnishing an affidavit that she would not claim any stipend for the period of absence and that she would complete her tenure before the examination and that she will not be eligible for stipend for the extended period of the course. It is stated that the petitioner immediately thereafter filed an affidavit on 30.07.2015 and was permitted to join her course. It is submitted that subsequently the impugned order dated 03/04.08.2016 (Annexure P/12) was passed by the respondents authorities i.e. the Dean of the Netaji Subhash Chandra Bose Medical College, Jabalpur, refusing permission to the petitioner to continue the course and cancelling her admission. The petitioner being aggrieved has filed the present petition before this Court.

**5.** The learned Government Advocate appearing for the State submits that the petitioner was granted admission in the two year diploma course in Anesthesia at Netaji Subhash Chandra Bose Medical College, Jabalpur and the petitioner

immediately, on joining the course on 06.08.2014, filed an application seeking maternity leave for six months and thereafter proceeded on leave without seeking prior permission or approval of the Dean of the Medical College. It is stated that the petitioner, even after enjoying six months maternity leave, instead of joining the course, again filed an application seeking medical leave for a further period of one month and similar applications were repeatedly filed by the petitioner till the month of May, 2015.

**6.** It is submitted by the respondents that the petitioner ultimately submitted an application on 01.6.2015 seeking permission to join the course, whereupon the matter was taken up by the College Post Graduate Committee, which took a decision to permit the petitioner to continue her course subject to her filing an affidavit and for completing the tenure before the examination.

**7.** It is submitted that the Dean sent the aforesaid decision of the Post Graduate Committee for approval to the Director, Medical Education, who in turn informed the College concerned that such permission was not permissible in terms of the provisions of Rule 4 & 5 of the Admissions Rules of 2014 and that, in a similar case of one Dr. Smita Laad, the Director, Medical Education had already taken a decision to reject the

application and not permit the student concerned to pursue the course any further as telescoping or carrying forward of the seat of the previous course with a new course is not permissible. The Director, Medical Education, accordingly directed the college authority to take a decision by taking into consideration the provisions of the Rules.

**8.** The learned Govt. Advocate further submits that pursuant to non-approval of the decision of the College and the directions issued by the Director, Medical Education, the petitioner's case was taken up by the authority of the college and the impugned order dated 3/4.08.2016 was passed cancelling the petitioner's admission in terms of the provisions of Rule 4(1)(c) and Rule 5 of the Admissions Rules of 2014. The learned Government Advocate submits that in view of the aforesaid facts and circumstances, there is no merit in the petition, as no fault can be found with the impugned order, which is in terms of the provisions of the Admission Rules.

**9.** We have heard the learned counsel for the parties at length.

**10.** The learned counsel appearing for the petitioner has fairly given up the challenge to the validity of the Rule 4(1)(c) and Rule 5 of the Admission Rules of 2014, on the ground that the same are contrary to the provisions of the Maternity Benefit

Act, 1961, after going through the provisions of the Act which confine its applicability only to women who are in service as well as in view of the facts of the present case.

**11.** As far as the merits of the case are concerned, it is observed that the provisions of Rule 4(1)(c) of the Admission Rules, 2014 clearly prescribe that a candidate granted admission in Post Graduate Course would be eligible only for 90 days of maternity leave in terms of the circular of the State Government dated 03.06.2013. The provisions of Rule 5 clearly provides that a candidate who remains unauthorizedly and without information absent continuously for 30 days, then his/her admission would be treated as cancelled automatically and such period of absence will not be adjusted against any of the permitted leave to the candidate.

**12.** The provisions of Rule 4 also makes it clear that a candidate pursuing the Post Graduate Course would be entitled to one weekly off, causal leave for 19 days per academic year, medical leave for 15 days per year without stipend with prior permission on submitting a sickness certificate within 10 days and 90 days maternity leave with prior permission. Apart from the aforesaid leaves mentioned in the Rules, no other leave is available to a candidate pursuing the Post Graduate Course.

**13.** For ready reference, the provisions of Rule 4 and Rule 5 of

the Admission Rules, 2014 are reproduced hereinunder:-

**“4. (1) The Students shall be entitled to (Including In-Service Candidates/Demonstrator) :-**

(a) One weekly off (non cumulative);

(b) Casual leave for 19 days per academic year.

(c) Entitlement of Maternity leave without stipend during the entire tenure shall be 90 days with prior permission of the Dean/Principal. Medical certificate must be produced within ten days of proceeding on leave. As per M.P. Govt. Deptt. Of Medical Education Ministry order no.F5/123/2013/01/55 Bhopal dated 03/06/2013.( Annex.)

(2) As per Madhya Pradesh Government Medical Education Department order No. 147/4572/03/55/LV-M.E.-1, Dated 14-01-04 Medical leave shall be 15 days per year without stipend with prior permission. Sickness Certificate has to be produced within 10 days after proceeding on leave. This leave can be taken every year, but it will not be cumulative. **Information regarding leave should be forwarded through Head of the Department of the concerned subject to the Dean Office.**

**5. Students found guilty of misconduct, indiscipline and absence shall be liable to disciplinary action including expulsion from College by the Dean / Principal and cancellation of registration by the University. If the candidate unauthorisedly & without information remains absent continuously for 30 days then his/her admission will be treated as cancelled automatically. This period of absence will not be adjusted against any of the permitted leave to the candidate.”**

**14.** In the instant case, the petitioner immediately on obtaining admission proceeded for six months maternity leave without obtaining prior permission of the Dean/Principal of the Medical College inspite of the fact that the petitioner was well aware of the provisions of the Rules, which provided only 90 days maternity leave. The facts on record also indicate that after completion of six months period, the petitioner again applied for medical leave, and not maternity leave, on

04.02.2015 vide Annexure P/5 without joining the course and without obtaining prior permission. A perusal of the application filed by the petitioner as Annexure P/5 further indicates that no period for which leave was sought has been mentioned in the application and the medical certificate filed by the petitioner alongwith the application indicates that she was allegedly suffering from severe anaemia with backache. The petitioner thereafter filed another application on 23.03.2015 again seeking medical leave for an unspecified period alongwith the medical certificate indicating that she was allegedly suffering from hypertension with vertigo and anaemia. The petitioner thereafter filed a repeat application for medical leave on 23.4.2015 which was again for an unspecified period and was supported by a medical certificate indicating that she was allegedly suffering from hypertension with vertigo. On 24.5.2015 the petitioner again filed an identical application alongwith a medical certificate indicating the same ailments and by filing such repeated applications for medical leave and not maternity leave, the petitioner continued to remain absent from the course without obtaining prior permission from the Dean of the College or without specifying the period for which she had sought leave.

**15.** The facts on record indicate that the petitioner after



remaining absent from the course for nearly ten months ultimately filed an application seeking permission to join the course alongwith a certificate of fitness on 01.6.2015. The petitioner's matter was taken up by the Post Graduate Committee of the college which, without considering the provisions of Rule 4 and 5 of the Admissions Rules of 2014, took a decision to permit the petitioner to continue the course subject to her filing an affidavit to the effect that she would not claim stipend for the period of absence of one year or for the extended period and would complete her tenure before the examination, pursuant to which, the petitioner filed an affidavit on 03.7.2015 and was permitted to join the course.

**16.** With a view to ascertain as to how the petitioner's applications were processed, this Court had directed the respondent/State to produce the original record and file relating to the aforesaid issue, which has been produced and placed before this Court today during the course of hearing.

**17.** From a perusal of the same, it appears that the decision of the Post Graduate Committee of the College was sent for approval by the Dean of the Medical College to the Director, Medical Education and the Director, Medical Education immediately informed the College concerned that in a similar case of one Dr. Smita Laad of Medical College, Bhopal, the

authorities had already taken a decision to the effect that absence from the course beyond three months was not permissible in terms of the Rules as any break in the course would ultimately lead to telescoping or carrying forward of the seat to the next year which was not permissible, and the request of Dr. Smita Laad had been rejected. The Director, Medical Education, therefore, informed the authority concerned to take a decision on the application of the petitioner in terms of the provisions of the Rules. The note-sheet available in the record file indicates that this fact was taken note by the authorities of the College on 09.10.2015 itself wherein a note has been placed in the note-sheet to the effect that the Director, Medical Education had already directed not to continue the student.

**18.** The records of the respondent/college further reveal that though this direction issued to the respondent/college was taken note on 09.10.2015, the Dean again sent the matter back to the Director, Medical Education for its opinion on 26.10.2015. Thereafter, on the directions of the Director Medical Education, the matter was again placed before the authority by a note-sheet dated 16.3.2016 wherein again the Dean of the College made a note that the application of the petitioner for permission to join the course could not be

entertained and deserves to be rejected. The records of the respondent/college indicate that inspite of the fact that the Director, Medical Education had issued directions regarding discontinuation and cancellation of admission which were received by the College on 09.10.2015 and again on 16.3.2016, the college ultimately issued a formal order cancelling the petitioner's admission on 04.08.2016. However, there is no reason evident or apparent from a perusal of the record and file of the respondents to indicate as to why the issuance of the order was delayed from 09.10.2015 to 04.8.2016.

**19.** From the aforesaid facts on record, it is clear that though the Rules permit only three months' maternity leave, the petitioner without obtaining prior permission proceeded for six months' maternity leave and thereafter did not join the course by simply filing applications seeking medical leave and not maternity leave for unspecified periods and ultimately filed an application seeking joining on 1.6.2015. The file produced before us clearly establishes the fact that none of the leave applications filed by the petitioner were either sanctioned or approved inspite of which the petitioner continued to remain absent. It is also apparent that even after the period of six months maternity leave was over, the petitioner inspite of

having full knowledge of the Rules continued to apply for medical leave for unspecified periods and continued to remain absent without any prior permission or sanction of leave.

**20.** It is also clear from a perusal of Rule 5 of the Admission Rules of 2014, that the maximum period of medical leave that a student can avail is 15 days and that in case a student remains on unauthorized absence for more than 30 days, the admission would stand cancelled automatically.

**21.** If the provisions of the aforesaid Rules are applied to the case of the petitioner, it is evident that even after availing six months of maternity leave beyond the period of 90 days prescribed under Rule 4(1)(c) of the Admission Rules of 2014, she continued to remain absent on unsanctioned medical leave and without obtaining prior permission of the college or the Dean for more than 30 days i.e. for four months and, therefore, as per the operation of the provisions of Rule 5 of the Admission Rules of 2014, her admission stood automatically cancelled.

**22.** Quite apart from the above, it is also clear that the decision of the Post Graduate Committee to permit the petitioner to join the course subject to her filing an affidavit and giving an undertaking, was de-hors the provisions of the Admissions Rules of 2014, was sent for and subject to

approval of the Director Medical Education who immediately informed the college to cancel the admission of the petitioner in terms of the provisions of the Rules and also gave the instance of Dr.Smita Laad, but for reasons best known to the college, the formal order cancelling the petitioner's admission was issued by the college only on 4.8.2016, that too, after repeated directions and orders by the DME.

**23.** At this stage, the learned counsel for the petitioner by placing reliance on the decision of the Madras High Court in the case of **Nithya vs. University of Madras and others, AIR 1995 Madras 164**, submits that a candidate who has remained on maternity leave is entitled to certain extra benefits and condonation of absence on account of maternity leave, being a woman and having to bear a child which is quite a natural phenomenon and which requires special consideration.

**24.** The learned counsel for the petitioner submits that the Madras High Court in the aforesaid case has taken all these aspects into consideration and condoned the absence of the candidate on maternity ground and permitted the petitioner therein to rejoin the course.

**25.** We have carefully perused the decision of the Madras High Court as well as the decision of the Supreme Court

rendered in the case of **Municipal Corporation of Delhi vs. Female Workers (Muster Roll) and another**, 2000 (3) SCC 224 and the Division Bench decision of this Court rendered in the case of **Mrs. Priyanka Shrivastava Vs. Registrar General**, (W.P. No.17004/2015) decided on 2.3.2017 cited and relied upon by the learned counsel for the petitioner in support of the submission that a sympathetic view in the matter is required to be taken as the petitioner, who is a lady, had no option but to go on maternity leave and could not rejoin the course on account of illness of the child who was suffering from neonatal problems.

**26.** We have rendered serious consideration on the aforesaid submission of the learned counsel for the petitioner and its applicability to the facts of this case.

**27.** At the very outset, we think it necessary to clarify that the present case is not one of maternity leave and, therefore, all the aforesaid decisions relied upon by the learned counsel for the petitioner have no applicability to the present case. We are constrained to say so, as the documents filed by the petitioner herself indicates that apart from the first application for six months maternity leave, all the remaining four applications filed by the petitioner after November, 2014 seeking leave were not for the purposes of seeking maternity

leave but for normal medical leave i.e. medical unfitness of the petitioner herself wherein she has herself stated that she, and not the new born child, was allegedly suffering from hypertension with vertigo and anaemia, and secondly that the petitioner's admission has infact been cancelled by the authorities on account of this unauthorised absence taking into consideration the provisions of Rule 5 which provides that admission of a candidate, who remains absent unauthorisedly for more three months, shall stand automatically cancelled.

**28.** In the circumstances, the issues raised by the learned counsel for the petitioner for taking a sympathetic view as the petitioner was on maternity leave and the reliance placed by him on the aforesaid decisions, in the facts and circumstances of the present case are totally misconceived and have no applicability to the issues involved in the present case. As far as the decision of the Madras High Court is concerned, the said decision also related to maternity leave by a candidate and though it related to a student, however, the said decision is also distinguishable from present case, as no such provisions of Rules 4 and 5 of the Admission Rules of 2014 was either prescribed or available in that case.

**29.** We also find considerable force in the contentions of the learned Government Advocate based on the stand taken by the Director, Medical Education that permitting the petitioner at this stage to pursue her course would result in telescoping and carrying forward of the seat and would disturb the student teacher ratio of the current academic year and would be contrary to the MCI Regulations as the petitioner was granted admission in two year diploma course of 2014 which period has already lapsed, as we are at present dealing with the matter in the year 2018 and any misplaced consideration in the petitioner's case would result in adding and increasing the number of students in the diploma course in the year 2018.

**30.** In view of the aforesaid facts and circumstances, we are of the considered opinion that, as the petitioner remained absent for more than the period prescribed under the Rules without obtaining prior permission or sanction of leave, no fault can be found with the order of the authority cancelling the admission of the petitioner in terms of the provisions of Rules 4 and 5 of Admission Rules of 2014, moreover, the provisions of Rule 5 of the Admission Rules of 2014, result in automatic cancellation of such an admission. We are also of the considered opinion that the impugned order also result in



parity and uniform applicability of the Rules in view of the fact that the authorities of the State have taken a consistent view in such matters as is evident from the decision taken by the authorities in the case of one Dr. Smita Laad, copy of the order relating to whom has been perused by this Court as it is available in the original record of the College which has been produced before us.

**31.** In view of the aforesaid facts and circumstances, the petition filed by the petitioner, being meritless, is accordingly dismissed and the impugned order dated 03/04.8.2016 is affirmed and confirmed.

**(R.S. Jha)**  
**Judge**

**(Mohd. Fahim Anwar)**  
**Judge**