

**IN THE HIGH COURT OF JAMMU & KASHMIR AND  
LADAKH AT SRINAGAR**

**RP No.76/2023**

**NADEEM UR REHMAN & OTHERS** ...PETITIONER(S)

Through:- Mr. S. F. Qadiri, Sr. Adv. with  
Ms. Maroofa, Advocate.

Vs.

**UT OF J&K & OTHERS.** ...RESPONDENT(S)

Through:- Mr. Mohsin S. Qadiri, Sr. AAG, with  
Ms. Maha Majeed, Advocate.

**CORAM:-**

**HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE.**

**ORDER(ORAL)**  
**29-11-2023**

**1)** The review petitioners, who happen to be writ petitioners No.1 and 3 to 8 in the main writ petition, have filed the instant review petition seeking review of the judgment and order dated 08.11.2023 passed by this Court whereby writ petition bearing WP(C) No.2233/2023 has been disposed of.

**2)** Before coming to the grounds of review, it would be apt to refer to the facts leading to filing of the instant review petition. The writ petitioners including review petitioners herein challenged provisional select list of NEET-PG 2023 issued vide notification No.065-BOPEE of 2023 dated 20.08.2023. Challenge was also thrown to communication No.BOPEE/Exam/10/2023 dated 22.08.2023. The main ground of

challenge projected by the writ petitioners was that while allocating the disciplines, respondent BOPEE has not strictly followed the letter and spirit of Rules 15 and 17 of the Jammu and Kashmir Reservation Rules, which provide for protecting the interests of the meritorious candidates including the meritorious candidates amongst Reserved Categories.

**3)** This Court, while agreeing with the contention of the writ petitioners that the aforesaid Rules have not been correctly interpreted and applied by respondent BOPEE in the matter of selection and allocation of disciplines while formulating the impugned provisional select list, passed the following directions in favour of writ petitioners No.9 to 12:

- (I) *Petitioner No.9 is held entitled to admission in MS Ortho in GMC, Srinagar, petitioner No.10 is held entitled to admission in MD Psychiatry in SKIMS, Srinagar, petitioner No.11 is held entitled to admission in MS General Surgery in GMC, Jammu and petitioner No.12 is held entitled to admission in MS Orthopedics in GMC, Jammu.*
- (II) *The respondents are directed to keep one seat each in the aforesaid disciplines in the aforesaid institutions reserve in the next session and the petitioners No.9 to 12 shall be entitled to admission against these seats/disciplines in accordance with their entitlement determined hereinbefore. The respondent-Board shall not put the aforesaid seats/disciplines for selection for admission to PG Course, 2024.*
- (III) *Additionally, the respondents shall pay compensation in the amount of Rs 2.00 lacs (rupees two lacs) to each of the petitioner Nos. 9 to 12 for having denied to these petitioners their rightful claims.*

4) So far as writ petitioners No.1 and 3 to 8 (review petitioners herein) are concerned, it was observed by this Court that the said petitioners have joined the disciplines that were allocated to them, therefore, no relief can be granted in their favour. This was done in order to save a situation whereby the review petitioners would be prompted to leave their seats which in turn would get wasted as the admission process had already closed.

5) The review petitioners have challenged the judgment under review to the extent of declining relief in their favour. It has been submitted that after the passing the judgment under review, the respondent BOPEE has issued notification bearing No.121-BOPEE of 2023 dated 23.11.2023 for conducting Special Stray Vacancy Round for admission to MD/MS/PGD Courses-2023. On this basis it has been submitted that the statement of respondent BOPEE made in the writ petition that the admission process had closed on 20<sup>th</sup> October, 2023 is not based upon correct facts. It has been submitted that the admission is going to close on 30.11.2023, as is clear from a bare reading of notification dated 23.11.2023. It has been contended that the aforesaid fact has come to the notice of the review petitioners after passing of the judgment under review and immediately thereafter the present petition has been moved. It has been further contended that issuance of the aforesaid notification dated 23.11.2023 is an important fact which has a great bearing upon outcome of the case, inasmuch as once it is shown that the admission process to PG Courses, 2023, has not culminated on 20.10.2023, the review petitioners would

become entitled to the same relief as has been granted in favour of writ petitioners No.9 to 12.

6) I have heard learned counsel for the parties and perused the record of the case.

7) Rule 65 of the Jammu and Kashmir High Court Rules, 1999 deals with power of the High Court with regard to the review of a judgment. It reads as under:

***“65. Application for review of judgment- The Court may review its judgment or order but no application for review shall be entertained except on the ground mentioned in order XLVII Rule 1 of the Code.”***

8) From a perusal of the aforesaid provision, it is clear that a plea for review of a judgment can be entertained only on the grounds mentioned in Order XLVII Rule 1 of the Code of Civil Procedure. Here it would be apt to quote the provisions contained in Order XLVII Rule 1 of the CPC, which reads as under:

***“1. Application for review of judgment-”(1) Any person considering himself aggrieved-***

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
- (b) by a decree or order from which no appeal is allowed, or*
- (c) by a decision on a reference from a court of small causes, and who, from the discovery of new an important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain*

*a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.*

- (2) *A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.*

*Explanation:- The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for review of such judgment."*

**12)** From a perusal of the aforesaid provision, it is clear that review of a judgment can be made on the following grounds:

- (i) *if it is shown by the aggrieved person that a new and important matter and evidence which, after exercise of due diligence, was not within his knowledge or could not be produced by him, has been discovered,*
- (ii) *if there is some mistake or error apparent on the face of record; and*
- (iii) *for any other sufficient reason.*

The expression "for any sufficient reason" has been interpreted by the Courts to mean a reason analogous to the first two reasons.

**13)** In the instant case, the review petitioners have pressed into service the first ground of review, as stated hereinabove and it has been contended that a new and important fact, which was not within the

knowledge of the review petitioners, has been discovered by them and the said fact has an important bearing upon the outcome of the writ petition. In this regard it is to be noted that the fact which the review petitioners seek to bring to the notice of the Court is notification dated 23.11.2023 (supra) and the notice issued by Medical Counselling Committee for holding of counselling for filling up of Special Stray Vacancies. Both these notifications have come into existence after the judgment under review was delivered by this Court on 08.11.2023. So, these notifications were not even in existence at the time when the judgment under review was delivered by this Court. This is a subsequent event which does not qualify as a fact, which though in existence, was not within the knowledge of the review petitioners despite their due diligence.

**14)** The basis of the judgment under review is the earlier notification of the respondent BOPEE and the affidavit filed by it, according to which the whole admission process had to be concluded by the end of 20<sup>th</sup> October, 2023. A subsequent event cannot be made a ground for review of a judgment. The ground sought to be projected by the review petitioners for seeking review of the judgment, being a subsequent fact, does not fall within the parameters of Order XLVII Rule 1 of the Code of Civil Procedure.

**15)** Apart from the above, the Special Stray Vacancy Round of counselling is resorted to if seats remain vacant even after the completion of all rounds of counselling. The Special Stray Vacancy Round is not an

upgradation round and the joined candidates of earlier rounds are not eligible to be given the chance of upgradation. The aforesaid round of counselling is available only to those candidates who are not holding any seat, either in All India Quota or in State Quota. Therefore, after the completion of earlier rounds of counselling for admission to PG courses for academic year 2023, the admission process of the candidates had virtually closed by the time this Court delivered the judgment under review. Therefore, it cannot be stated that at the time of passing of the impugned judgment, any important fact was not within the knowledge of this Court or that the same had been withheld from it.

**16)** Learned Senior counsel appearing for the review petitioners has contended that the respondent BOPEE was knowing that there will be a Special Stray Vacancy Round of counselling but the respondent Board deliberately chose to inform this Court that the admission process has concluded thereby defeating the rights of the review petitioners.

**17)** The aforesaid contention of the learned Senior counsel appearing for the review petitioners is without any merit because, as already stated, the Special Stray Vacancy Round of counselling is resorted to only in an eventuality where even after conclusion of all rounds of counselling, certain seats remain vacant. The respondent BOPEE could not have visualized before hand that some seats would remain vacant even after completion of all rounds of counselling.

**18)** Even otherwise, at this stage when admission to PG Courses pursuant to Special Stray Vacancy Round of counselling has ended, it

may not be possible for this Court to grant any relief to the review petitioners, as it would cause prejudice to the rights of the candidates who have already joined and are not parties to the writ petition.

**19)** For the foregoing reasons, I do not find any merit in this review petition. The same is, accordingly, dismissed.

**(SANJAY DHAR)**  
**JUDGE**

**SRINAGAR**  
29.11.2023  
"Bhat Altaf, PS"

<i>Whether the order is speaking:</i>	<i>Yes/No</i>
<i>Whether the order is reportable:</i>	<i>Yes/No</i>

