

Court No. - 7

Case :- WRIT - A No. - 5434 of 2023

Petitioner :- Dr. Arun Kumar Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Medical Education, U.P. Lucknow And 2 Others

Counsel for Petitioner :- Manish Misra, Dileep Pandey, Gaurav Upadhyay, Pranendra Mirdha

Counsel for Respondent :- C.S.C., Shubham Tripathi

Hon'ble Abdul Moin, J.

1. Supplementary affidavit filed today in Court is taken on record.
2. Heard Sri Manish Mishra, learned counsel for the petitioner, learned Standing Counsel for respondent no.1, Sri Abhinav Narain Trivedi, learned counsel for respondent no.2 and Sri Shubham Tripathi, learned counsel for respondent no.3.
3. With the consent of learned counsel for the parties the writ petition is being finally decided.
4. At the very outset, Sri Abhinav Narain Trivedi, learned counsel for respondent no.2, states that in pursuance to the order of this Court dated 28.07.2023 he has received instructions per which there is no vacant super-specialty post in Neurosurgery which exists in L.L.R.M. Medical College, Meerut or in any other Government Hospital in Meerut on which the petitioner can be accommodated.
5. The aforesaid statement of Sri Trivedi is recorded.
6. Bereft of unnecessary details, the facts as set forth by the learned counsel for the petitioner, are that the petitioner was appointed on the post of Assistant Professor in the Department of Neurosurgery on contractual basis under a bond executed for a period of two years. His appointment was made in November, 2021. Although it was a bond for a period of two years yet as the petitioner was also selected for fellowship program of Endovascular Neurosurgery his bond period was extended by one year which is now to expire in August 2024. For the remaining period of his service under the bond, the petitioner had requested for being transferred to Meerut on the ground that he is suffering from Left Lower Pole Renal Calculus and he has been operated for L4-L5 Intervertebral Disc. The petitioner is

residing alone at Lucknow. The physical condition of the petitioner requires physical support of his family and his parents and his wife are residing at Meerut and the petitioner's wife is pursuing her MD Anesthesia from Lala Lajpat Rai Memorial Medical College, Meerut. The petitioner has also been examined by a medical board constituted by respondent no.2 which had submitted its report dated 04.07.2023 which duly finds mention in the order impugned.

7. The petitioner had given instances of various doctors who have been transferred on their requests and all of them had been posted in departments other than the departments of their super-specialty. Initially, the petitioner's representation had been rejected by means of order dated 17.05.2023 on the ground that no post of Assistant Professor is vacant in the Neurosurgery Department of Medical College, Meerut.

8. Being aggrieved against the order dated 17.05.2023 the petitioner filed Writ A No.4503 of 2023 in re: Dr. Arun Kumar Singh vs. State of U.P. and others, and this Court vide judgment and order dated 09.06.2023, a copy of which is Annexure-18 to the writ petition, quashed the order of rejection and required the Director General Medical Education i.e. respondent no.2 to take a fresh decision on the representation of the petitioner in view of the observations made by this Court.

9. Subsequent thereto, the representation of the petitioner has again been rejected vide order impugned dated 11.07.2023, a copy of which is Annexure-1 to the writ petition.

10. Raising a challenge to the order impugned dated 11.07.2023 the contention of learned counsel for the petitioner is that the respondents have failed to consider that once various doctors have been posted in departments other than the departments of super-specialty consequently the petitioner who has been medically examined by the medical board and has been found to be unfit also deserves to be posted at Meerut.

11. Responding to that the contention of Sri Abhinav Narain Trivedi, learned counsel for respondent no.2, is that as the petitioner had given a bond for serving for a period of two years and that bond was with respect to a particular medical institute itself, in this case KGMU i.e. respondent no.3, consequently there cannot be any occasion for transfer of the petitioner to some other institute.

12. Having heard learned counsel for the parties and having perused the records, what emerges is that admittedly the petitioner has been certified as medically unfit by the medical

board constituted by respondent no.2 which also finds place in the order impugned. The request of the petitioner for being accommodated in any hospital in Meerut had initially been rejected vide order dated 17.05.2023. The said order has been set-aside by this Court vide order dated 09.06.2023 and the respondent no.2 has been required to reconsider the claim of the petitioner which again has been rejected vide the order impugned dated 11.07.2023, a copy of which is Annexure-1 to the writ petition.

13. Though a ground has been taken by the respondents in the order impugned that as the petitioner has executed a bond for serving for a period of two years (which now stands extended upto August 2024) and there is no provision for the bond holder/doctor having executed a bond for being transferred yet the Court is of the view that as the medical board has already given the unfitness of the petitioner and previously the respondents have already transferred various doctors in other institutes as such the claim of the petitioner be also examined in light of the aforesaid sympathetically keeping in view the determination of the medical board in this regard.

14. Considering the aforesaid, the writ petition is disposed of with a direction to respondent no.1 to re-examine the claim of the petitioner for his transfer in any government hospital in Meerut keeping in view the medical condition of the petitioner as indicated by the medical board vide its report dated 04.07.2023.

15. Let the claim be examined and an order in this regard be passed within a period of four weeks from the date of receipt of a certified copy of this order.

16. The order impugned dated 11.07.2023 would be subject to the orders which are passed by respondent no.1

Order Date :- 1.11.2023

A. Katiyar