

Court No. - 7

Case :- WRIT - A No. - 5846 of 2023

Petitioner :- Dr. (Smt) Vijayta Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Medical Health And Family Welfare Lko And 3 Others

Counsel for Petitioner :- Manoj Kumar Gupta

Counsel for Respondent :- C.S.C.,Ran Vijay Singh,Shubham Tripathi

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the petitioner, Shri P. K. Singh, learned Standing counsel appearing on behalf of respondents no. 1, Sri Parimal Bhatt, Advocate, holding brief of Sri Abhinav Narain Trivedi, learned counsel for the respondent no. 2, Sri Ran Vijay Singh, learned counsel for the respondent no. 3 and Sri Shubham Tripathi, learned counsel for the respondent no.4.

2. With the consent of learned counsel appearing for the contesting parties, the writ petition is being finally decided.

3. The instant writ petition has been filed praying for quashing of the order dated 24.07.2023, a copy of which is annexure 1 to the writ petition, passed by the respondent no. 3 whereby the No Objection Certificate as required by the petitioner to appear in the interview for the post of Assistant Professor (Pathology) as advertised by the respondent no. 4 i.e King George Medical University has not been issued.

4. Perusal of the order impugned would indicate that except for a bald averment that the competent authority has not approved the issuance of the No Objection Certificate no other averment has been made in the said order. No reasons have been indicated in the order impugned as to why the competent authority has not acceded to the request for issuance of the No Objection Certificate to the petitioner.

5. When the case was taken up on 10.08.2023, learned counsel for the petitioner had expressed urgency in the matter contending that interview for the post of Assistant Professor, Pathology has started from 15.07.2023 and in case No Objection Certificate is not issued by the respondents, the petitioner may not be able to appear in the said interview. In view of the urgency, learned counsels for the respondents were required to seek instructions.

6. Today, Shri P. K. Singh, learned Additional Chief Standing Counsel appearing for the respondent no. 1 informs on the basis of the instructions sent by the Special Secretary, Medical Education dated 18.08.2023 that keeping in view the government order dated 17.06.2021 it has not been found feasible to grant No Objection Certificate to the petitioner. The reasons as to why it has not been found feasible to grant No Objection Certificate is stated as that in the institution in question i.e. respondent no. 3, in the pathology department there should be three assistant professors as per the norms of the National Medical Council. It has been indicated that in case No Objection Certificate is granted to the petitioner there would be lesser number of assistant professors which would create problem for grant of recognition from the National Medical Council.

7. Shri P. K. Singh also contends that as the medical education department is directly related with public interest and with the welfare of the patients, as such in case sufficient number of staff are not available the same would be against public interest and against the interest of patients and consequently it has not been found feasible to grant No Objection Certificate to the petitioner. He has passed on the copy of the government order dated 17.06.2021 which is taken on record.

8. Responding to the aforesaid argument of Shri P. K. Singh, learned Additional Chief Standing Counsel, learned counsel for the petitioner states at bar that there are large number of vacancies available in primarily all the medical colleges throughout the state of Uttar Pradesh and thus in case the patient care is suffering the No Objection Certificate of the petitioner cannot be withheld on the ground of their being less doctors to serve the general public for it is always open for the respondents to recruit more doctors. It is also stated at the bar that in case the State Government and its officials and those at the helm of the affairs are not making recruitment then it is obviously the general public which is suffering and the patient care is also suffering but for this inaction on their part the petitioners' No Objection Certificate cannot be withheld.

9. The aforesaid grounds taken by the competent authority for refusing the No Objection Certificate to the petitioner are found patently misconceived by this Court. The reasons are that the petitioner in the capacity of working as an Assistant Professor under the respondent no. 3 has not foregone or bartered away her right of seeking better avenues for the progression of her career. The petitioner has applied for a post in the King George Medical University, Lucknow. In case the staff gets reduced in the respondent no. 3 institution after her selection in the respondent no. 4 institution the same cannot be considered to be a valid ground for stopping and not giving No Objection Certificate to the petitioner in as much as it is always open for the respondent no. 3 and for the State Government to recruit more persons but non recruitment and non availability of eligible persons on the one hand and not relieving the petitioner/granting No Objection Certificate to the petitioner cannot be countenanced in any manner.

10. So far as the ground that as the medical education department is directly concerned with public health and patient care and thus it would not be in the interest of public to grant No Objection Certificate to the petitioner, the said argument is again patently fallacious and misconceived. Obviously in case the respondents are so concerned about public health and patient care nobody has stopped them from recruiting more doctors.

11. Non recruitment of personnel despite a large number of vacancies being available in primarily all the medical colleges, as has been stated by learned counsel for the petitioner at bar, and making do with the minimal number which are at disposal of the State cannot be said to be a valid ground for non grant of No Objection Certificate to the petitioner more particularly when it is alleged that the patient care is already suffering on account of callous and cavalier attitude and the total casual approach of the officials of the State government and those are at the helm of affairs in not making recruitment where they are required. In case the State finds itself having lesser number of staff it is to thank itself and its officials for the peculiar situation in which it finds itself but the said argument is not a valid ground for withholding the No Objection Certificate of the petitioner.

12. So far as the government order dated 17.06.2021 is concerned, a perusal of paragraph 3 would indicate that there is no bar to grant of any No Objection Certificate after an employee has served for a period of two years but the issue of No Objection Certificate only requires the approval of a higher competent authority. The said government order thus does not bar or restrict grant of No Objection Certificate as has been sought to be made out by the respondents.

13. Keeping in view the aforesaid discussion, the writ petition is **allowed**. The order dated 24.07.2023, a copy of which is annexure 1 to the petition, is set aside. The competent authority is directed to grant No Objection Certificate to the petitioner.

14. At this stage, Shri Subham Tripathi, learned counsel for the respondent no. 4 states on the basis of oral instructions that interview is now scheduled for 18.10.2023.

15. Considering the aforesaid, the competent authority is directed to grant No Objection Certificate to the petitioner by 17.10.2023. It is also provided that if no orders are passed pertaining to the grant of No Objection Certificate the respondent no. 4 would permit the petitioner to appear in the said interview on the date the interview is scheduled i.e. on 18.10.2023 subject to the petitioner subsequently submitting No Objection Certificate to the respondent no. 4.

16. Shri P. K. Singh, learned Standing counsel appearing on behalf of respondents no. 1, Sri Parimal Bhatt, Advocate, holding brief of Sri Abhinav Narain Trivedi, learned counsel for the respondent no. 2, Sri Ran Vijay Singh, learned counsel for the respondent no. 3 and Sri Shubham Tripathi, learned counsel for the respondent no.4 will inform about this order in writing to the authorities concerned today itself without waiting for certified copy of this order.

17. Let the certified copy of this order be provided to learned counsel for the parties within 24 hour on payment of usual charges.

Order Date :- 13.10.2023
J.K. Dinkar