

**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

**CWP No.23587 of 2014 (O&M)**

**Date of decision: 27.05.2015**

Ashok Kumar

... Petitioner

Vs.

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Lalit Rishi, Advocate  
for the petitioner.

Mr. Ashok Kumar, DAG, Haryana  
for the State.

**AMIT RAWAL J. (Oral)**

Prayer in the present writ petition is for quashing of the impugned order dated 27.05.2014 (Annexure P-4), whereby the request of the petitioner for issuance of 'No Objection Certificate' has been declined on the premise that a teacher can resign from the Government service from his present post and can take the charge of other post, which compelled him to tender resignation from the post of JBT by surrendering his one month salary.

Mr. Lalit Rishi, learned counsel for the petitioner submits that the petitioner was appointed as JBT Teacher on 05.01.2011 by the Education Department, Haryana and has been working as JBT Teacher at Government High School, Anwal, District Rohtak,

Haryana. In pursuance to the advertisement issued by the Haryana Government Education Department, Chandigarh for filling up the posts of Post Graduate Teacher (PGT), the petitioner applied for the same and was duly selected vide order dated 12.05.2014 (Annexure P-7). On being selected to the post of PGT (Hindi), the petitioner is stated to have submitted an application dated 13.02.2014 to the Headmistress, Government High School, Anwal Rohtak, for issuing NOC to him. The aforementioned application was forwarded to the Block Elementary Education Officer, Kalannaur, Rohtak, Haryana for further proceedings but despite that no action was taken nor any NOC had been issued. Even the Director General, Elementary Education Haryana, vide its letter dated 07.03.2014 directed the District Elementary Education Officer, Rohtak for issuance of NOC, but yet no action was taken, which compelled the petitioner to approach this Court. It has further been pointed out that vide impugned order dated 27.05.2014 (Annexure P-4), respondents have declined NOC on the premise that the petitioner can submit his resignation. Since the petitioner has already rendered service of 3 ½ years as JBT and in case of issuance of NOC, the aforementioned period would be counted for the purpose of total length of service.

Mr. Lalit Rishi, learned counsel for the petitioner, in support of aforementioned submission, cited instances as reflected in paragraph 15 of the writ petition, wherein, similarly situated persons have also been granted NOC. Paragraph No.15 reads thus:-

*“15. That the respondents refused to issue NOC to the petitioner in most illegal, arbitrary, discriminatory and unseasonable manner. The respondents while issuing refusal letter has violated the relevant rules and policy of the State Government. It is pertinent to mention here that conduct of respondent No.3 is discriminatory because respondent No.3 except petitioner, issued the NOC to various person such as Bhagat Singh posted as JB Teacher as G.H.S.Nandal and selected as History Lecturer vide order no-Estt-3-2012/4095-96 dated 30.11.2012, Dayawati posted as JB.Teacher at G.H.S. Lahli and selected as Economics Lecturer vide order no.-Estt.-3-2012/Spl dated 30.10.2012, Sudesh posted as J.B.Teacher at G.G.S.S.S Kharanti and selected as English Lecturer vide order no.Estt-1-2012/5022/23 dated 10.12.2012, Nisha Rani posted as J.B.Teacher at G.P.S.Behlba and selected as Political Science Lecturer vide order no.-Estt.3-2012/5016-17 dated 03.12.2012.”*

Mr. Ashok Kumar, learned Deputy Advocate General, Haryana submits that as per the guidelines issued by the Chief Secretary of Government of Haryana, the candidate should submit an application form with all relevant documents except fee to his/her Appointing Authority who should forward the same to HPSC/HSSC, if considered eligible, within a week of receipt. He further referred to

Annexure R-3 that Section 14.2.5 of Chapter 14 of General Instructions issued by Minister of Home Affairs Government of India, whereby, it has been mentioned that in case of temporary government employee, an undertaking to the effect that they will resign in the event of their selection will be obtained before forwarding of application. Thus, impugned order is legal, fair and justified and there is no illegality nor the same reflects any arbitrary action.

In rebuttal, Mr. Lalit Rishi, learned counsel for the petitioner submits that the petitioner has been appointed on a regular post but his probation period has not yet been completed. In essence, the petitioner has not been confirmed.

I have heard learned counsel for the parties and appraised the paper book.

While rebutting in paragraph 15, the State has submitted the following reply:-

*“15. That the contents of Para No.15 of writ petition are wrong and hence denied. It is submitted due to ineligible, the application form of petitioner was not forwarded to the Haryana Teachers Selection Board, Panchkula. Hence he is not entitled to issue NOC. It is further submitted that some NOCs issued to some other candidates vide order dated 10.01.2013 and on some other dates were illegal and against the rule. It is further submitted that the*

*application forms of the above mentioned candidates were not forwarded by the District Elementary Education Officer, who was the only competent authority for this but same were forwarded by the then Deputy District Education Officer to the Haryana Teachers Selection Board, Panchkula and NOCs to these candidates were also issued by the same authority, who was not competent for this. Hence the issuance of NOC is totally wrong. It is further submitted that after verification of eligibility of candidates, their application forms should have been forwarded by the then District Elementary Education Officer to the Haryana Teachers Selection Board, Panchkula and NOCs should also be issued by the same . But in these cases NOCs were also issued by then Deputy District Education Officer which is against the Education Rules as only the then District Elementary Education Officer was competent to issue the same. When this illegality came to the knowledge of competent authority i.e. the then District Elementary Education Officer, he immediately informed Director Elementary Education Haryana and disciplinary action is to be taken against the defaulting officer. Copy of this letter dated 22.09.2014 is attached as Annexure R-4. It is further submitted that Hon'ble Apex Court has held in Civil*

*Appeal No.1237-38 of 1970 decided on 16.04.1980 titled as M/s Jit Ram Shiv Kumar and others, Appellants vs. State of Haryana and others. Respondents and Ram Niwas Gupta and others, Appellants vs. State of Haryana and others, Respondents that any misdeed or act committed or omitted by an officer beyond his/her jurisdiction is ultra virus to the Constitution of India and Government will not be held responsible for the act. The mistake can be rectified at any stage.”*

Since the petitioner has been appointed on a regular post and at the time of his selection as PGT, the petitioner had not been confirmed and is on probation. No rule/law has been cited that the petitioner cannot be issued NOC for consideration of his service rendered by him on the erstwhile post while he was selected on higher post. Since the petitioner has been selected on PGT, thus, service rendered for the period of 3 ½ years as JBT should be considered as total length of service, but the reasons given in the impugned order are not only erroneous but sketchy. No rule or law has been cited in rejecting the NOC.

Since there is no denial of issuing NOC to the other various candidates but they having been termed illegal. However, it has not been specified till date whether such NOC has been withdrawn or not.

In view of what has been observed above, impugned

order dated 27.05.2014, Annexure P-4 is thus, illegal, not sustainable in the eyes of law. Accordingly, the impugned order is set aside and the writ petition is allowed.

The respondents are directed to issue NOC within a period of one month from the receipt of a certified copy of this order.

**(AMIT RAWAL)**  
**JUDGE**

**May 27, 2015**  
savita