

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

CWP No.7417 of 2006

Dr. Ashish Aggarwal and others

... Petitioners

Versus

Union of India and others

... Respondents

(2)

CWP No.16495 of 2006

Dr. Gurmit Kaur

... Petitioner

Versus

Union of India and others

... Respondents

Decided on :21.11.2016

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. C.L Sharma, Advocate for the petitioners
in CWP No.7417 of 2006.

Mr. S.S. Sodhi, Advocate for
Mr. Ramesh Sharma, Advocate for the petitioner
in CWP No.16495 of 2006.

Mr. Aseem Aggarwal, Advocate
for respondents No.1, 3 and 4.

Mr. Manav Bajaj, Advocate for
Mr. Sumeet Goel, Advocate for respondent No.2.

G.S. Sandhawalia, J. (Oral)

The present order shall dispose of two writ petitions i.e. ***CWP Nos.7417 and 16495 of 2006***, as common questions of law and fact are involved. The facts are being taken from ***CWP No.7417 of 2006 'Dr. Ashish Aggarwal and others Vs. Union of India and others'***.

The petitioners seek the quashing of the order dated 31.03.2006 (Annexure P-9), whereby the request for payment of stipend at the minimum

rate of ₹19,000/- per month during the duration of the Diplomat of National Board Course (DNB Course) at Command Hospital (Western Command), Chandimandir-respondent No.4 has been rejected. The claim is made on the basis of the judgments of the Delhi High Court dated 18.12.2002 passed in '**Dr. Vishal Sehgal and others Vs. Secretary (Health) and others**' (Annexure P-3) and the subsequent judgment dated 06.01.2006 passed in '**Dr. Shiv Shanker Shahi and others Vs. Government of NCT of Delhi and others**' (Annexure P-4).

The petitioners had been given admission in the said course and vide undertaking dated 12.08.2002 (Annexure R-1) agreed to work with the Armed Forces without any regular pay or stipend during the training period of the course. They were also required to furnish necessary bonds to serve the Armed Forces for a period of 5 years, after completion of the course. The relevant part of the undertaking given by petitioner No.3-Dr. Kirpal Harish reads as under:-

“I, Dr. Kirpal Harish Ved Parkash son of Shri Ved Parkash Kirpal, Resident of House No.2724, Sector 38-C, Chandigarh, applicant for admission for DNB Training Course in Command Hospital, Chandi Mandir, do hereby certify that I shall abide by the requirements as laid down by the Armed Forces from time to time and I will furnish necessary bond to serve the Armed Forces for a period of 5 years after completion of courses. It is further submitted that I am willing to work without any regular pay or stipend during training for course.”

The appointment letter dated 19.10.2002 (Annexure P-1), in the case of petitioner No.1 was issued as PG Student in General Surgery for DNB Part II and money bond with the surety was to be given on

stamp paper for ₹100/- and the undertaking. It is not disputed that the bond was duly executed on 21.10.2002, in the case of petitioner No.1. As per terms and conditions of the bond, the said petitioner was to join the Armed Forces Medical Services as a Short Service Commissioned Officer on successful completion of the course and if found medically fit for the same. As per further conditions, on account of not joining, if offered they were liable to pay ₹5 lakhs in cash without demur. They were to report within such period as may be allowed by the Director General Armed Forces Medical Services, as per conditions set out in Army Instructions 75/78. The relevant part of the terms of the bonds reads as under:-

“KNOW ALL MEN BY THESE PRESENTS (1), I, Dr. Ashish Aggarwal son of Dr. Arun Kumar Aggarwal resident of E-1, ESI Hospital, Rajpura Distt. Patiala (Punjab), hereinafter called the PG student (which expression shall include his heirs, executors, administrators, and representatives)

Dr.Arun Kumar Aggarwal (Name of surety) son of Late Sh. Banarsi Dass resident of E-1, ESI Hospital Rajpura Distt. Patiala (Punjab), at present employed as SMO i/c ESI Hospital, Rajpura, hereinafter called the Surety (which expression shall include his heirs executors administrators and representatives) are jointly and severally held and firmly bound into the President of India hereinafter called the Government, in the terms and conditions for admission to postgraduate Diplomate of National Board Part II course at Command Hospital (WC) Chandimandir as stated hereinafter and expenses that may have been incurred by or occasioned to the Government to be paid to the Government for which payment to be will and truly made, we hereby bind ourselves, our heirs executors, administrators and representatives firmly by these present as witness our hands this 21 day of October 2002.

And whereas the PG student has undertaken to join and

continue post graduate studies in accordance with the rules and regulations of the National Board of Examinations and the command Hospital (WC) Chandimandir for obtaining PG degree In General Surgery (subject) of Diplomate in National Board of Examinations Part II and join the armed Forces Medical Services as a Short Service Commissioned Officer on successful completion of the course and found medically fit for the same.

And whereas the National Board of Examinations having agreed to sanction the admission to the said PG student the surety has agreed to execute the above bond with such consideration as hereunder written:

a) That in consideration of the PG student being admitted by the Government to the Command Hospital (WC) Chandimandir for the purpose Of obtaining diplomate of National Board, the PG student will attend the Command Hospital (WC) Chandimandir for obtaining the Diplomate of National Board and such other training as Govt may determine from time to time for the prescribed period until he/she successfully completes his/her Diplomate course and is declared fit (as to which the decision of director General Armed Forces Medical Services will be final) to be granted short service commission and that the PG student will be commissioned as a Medical Officer in the Regular army or in the Indian Navy or Indian air Force as SSC Officer unless he/she, the PG student is prevented from doing so on account of ill health or some reasons over which he/she, the PG student, has no control as determined by a service Medical Board (as to which the Govt shall be the sole judge) or by being removed on the ground that the PG student is considered by the said appropriate authority to be unfit to continue as PG student or on any ground to be granted a commission.

b) That in the event of the PG student (1) getting an adverse report regarding the progress of his/her training of studies or conduct or (2) discontinuing his/her studies or (3) being dismissed or discharged from the Command Hospital (WC) Chandimandir for knowingly furnished false particulars

for admission to the said college (4) Refusing to accept admission in the armed Forces Medical Services if offered, the PG student and the surety shall jointly and severally be liable to pay and refund forthwith to the Government on demand and without demur in cash an amount of Rupees Five Lakhs. The amount may be subject to revision upward in respect of which the decision of the Government shall be final and binding on the PG Student and surety failing which he/she shall be removed from the hospital rolls in addition to payment of amount calculated as aforesaid.

c) That the PG student shall on successful completion of his/her PG course report within such period as may be allowed by the Director General Armed Forces Medical Services as joining time to the unit or station as specified in this behalf by the Director General Armed Forces Services for Grant of Short Service Commission on the terms and conditions set out in Army Instructions 75/78.

d) That if the PG student after grant of short service Commission applied for release from service within five years of grant of said commission for any reason whatsoever and provided his/her release is sanctioned by the Government as per rules in force, he/she shall be relieved only after he/she refunded all the charges as per 3 (b) above”.

During the currency of the said diploma, the petitioners started demanding stipend, in view of the judgment passed by the Delhi High Court on 18.12.2002 (Annexure P-3). Resultantly, a decision was taken by the Ministry of Defence on 25.03.2004 (Annexure R-2) that there was no provision for payment of stipend. In case payment is insisted, then their course could be terminated and direction was issued not to admit further students in DNB Courses till further orders. The relevant part of the abovesaid order reads as under:-

“4. Your attention is drawn to para 3 of GOI, MOD letter

8510/DGAFMS/DG-ID/2273/2001/D (Med) dated 05 Nov 2001 (Copy attached) which governs PG admissions to various AFMS hospitals. There is no provision of payment of stipend to civilian doctors. In case the concerned DNB students insist on payment of stipend their course can be terminated.

5. You are directed not to admit any student in DNB courses at your hospital till further orders.

6. This has the approval of DGAFMS.”

On 25.04.2005 (Annexure P-2), the petitioner No.1 completed his Postgraduate Training and the necessary certificate was issued by the Commandant of the Command Hospital, Western Command, Chandimandir.

It is the case of the respondents that vide letter dated 25.10.2005, the petitioners had been called upon to fill up the application forms for Short Service Commission in AMC, but the petitioners had not responded. This alleged communication is hotly disputed by the petitioners. Eventually legal notice dated 24.12.2005 (Annexure P-6) was served upon the respondents claiming the amount of stipend. Thereafter, on 14.02.2006 (Annexure P-7), the respondents in pursuance of the bond called upon the petitioners to submit their application forms for completion of formalities as Short Service Commission in AMC and in case they were not willing, the sum of ₹5 lakhs be paid as bond money.

The petitioners had also approached this Court by filing **CWP No.2255 of 2006**, which was disposed of on 16.02.2006 by directing the respondents to take action on the legal notice dated 24.12.2005 by passing a speaking order. The petitioners also served legal

notice dated 28.02.2006 (Annexure P-8) asking upon the respondents to withdraw their letter dated 14.02.2006 and to pay them the stipend. Resultantly, keeping in view the directions issued by this Court, claim has been rejected.

The reasons given in the rejection order was that the training had been offered and accepted without any conditions of payment of stipend and they were to join the Armed Forces Medical Service after passing the Course. The institutions were charging ₹50,000/- for the DNB training, which was not levied upon them and the training was free of costs at the Command Hosptial. It was denied that they were made to work as junior residents like those in other civil accredited hospital and they were not substitutes for the regular staff of the hospital but worked only to the extent required for their own learning, practice and skill development. The petitioners had also given their written willingness to continue with their training course without stipend. Even after the issuance of the notices dated 25.10.2005, 18.12.2005 and 14.02.2006, the same had not been complied with and they had not joined the Armed Forces and thus there was a breach of contract. The judgment of the Delhi High Court was, accordingly, distinguished that it did not pertain to the Ministry of Defence and Command Hospitals.

Counsel for the petitioner has accordingly placed reliance upon the judgment dated 18.12.2006 passed in the case of ***Dr. Vishal Sehgal (supra)*** to submit that in similar circumstances stipend has been granted.

Counsel for the respondent-UOI has tried to distinguish the judgment by saying that it did not refer to any bond, which had been executed with the Armed Forces. In view of the contract *inter se* the parties, once the petitioners themselves have violated the terms and conditions of the bonds, in spite of being called upon, they were not liable to pay the stipend, in the peculiar facts and circumstances of the case.

After hearing counsel for the parties and keeping in view the above facts and circumstances and the contract *inter se* between them, this Court is of the opinion that the judgment passed by the Delhi High Court is not applicable on all squares to the present controversy in issue. In the said case the matter was not pertaining to service with the Armed Forces and neither there was any bond as such by the petitioners in that case where the training was being undertaken with the Civilian Hospital.

Reliance was placed upon '**Central Inland Water Transport Corporation Ltd. and another Vs. Brojo Nath Ganguly and another' (1986) 3 SCC 156** to submit that contracts of the undertaking given as such that they would not be liable to be paid stipend was an unconscionable term and could not have been enforced. It was, accordingly, held that payment had to be made for the work carried out, as they were similarly situated to the others.

In the present controversy, as noticed there is a specific bond, which had been executed on 21.10.2002 *inter se* the parties. It is not disputed that it is the specific case of the respondent-UOI that after

completion of the course and on getting the degree from the respondent-Board, the petitioners were required to join the Armed Forces, as per terms of the bond. In spite of being called upon on 25.10.2005, 18.12.2005 and 14.02.2006, they have not done so and therefore had violated the terms and conditions of the bond. In such circumstances, this Court would not exercise its discretion in their favour for the payment of stipend.

Reference can be made to the formality, which was to be completed at the time of joining the course to notice that on getting the certificate on completing the examination, an application had to be given for commissioning as Medical Officer for Short Service Commission in the AMC. In spite of being called upon on 25.10.2005 and 18.12.2005, which would be clear from the impugned order itself, the petitioners had chosen to agitate regarding their demand for stipend, after having successfully completing their course.

Reliance can be placed upon the Communication dated 14.02.2006 (Annexure P-7), wherein reference has been made to the Government of India, Ministry of Defence letter dated 05.11.2001 that bond would remain effective for a period of two years. The relevant portion reads as under:-

“Bond agreement of Rs.5 lakh (Rupees Five lakhs only) would be taken from the civilian candidate to serve as a SSC officer for 05 years. This bond will remain effective for 02 (two) years after the completion of the course.”

Vide said letter also the petitioners had been asked to apply

for Short Service Commission, which admittedly they had failed to do so and neither they had paid up the ₹5 lakhs, as per undertaking given.

In such circumstances, this Court is of the opinion that the claim for the stipend at the hands of the petitioners is not justified. They had failed to comply with the terms and conditions of the bond, in spite of being called upon by the respondent No.4. They chose to continue with the course from 2002 to 2005, in spite of the fact that they had been informed that they could terminate the course, if they wanted to. Once being bound by the agreement *inter se* the parties, they now cannot turn around to take advantage of both the situations of not joining the Short Service Commission of Armed Forces as they were required to do so and also put forward their claim for payment of stipend.

In such circumstances, the discretionary relief under Article 226 of the Constitution of India cannot be granted to the petitioners. Accordingly, the present writ petitions are dismissed.

NOVEMBER 21, 2016

Naveen

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes