

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

Date of decision: 22.08.2016

CWP No.16914 of 2016

Ram Kumar Mehla

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. J.K.Goel, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J.

This petition has been brought by Dr. Ram Kumar Mehla, who retired from Haryana Civil Medical Services on 31.07.2013. The respondent authorities issued an employment advertisement in March, 2012 inviting applications for the post of District Medical Officer (Specialist) in Medicine. The advertisement failed to elicit any response. There were no takers for this job. The initiative was rendered infructuous. This situation led to another advertisement published in the newspaper on 21.04.2013 for filling up the posts of Consultant Medicine/District Medical Officer under the NPCDCS Scheme to be filled on contract basis from amongst those eligible Doctors, who were qualified in MD in Medicine. The scheme was sponsored by the Government of India with expenses including salary shared between the Central Government and the Haryana Government in the ratio of 75%: 25% respectively. These were posts to be filled on contract basis with salary prescribed as ₹ 60,000-70,000/- per month as per the estimated budget for the NCD Clinic and CCU. Similarly, the Specialist Cardiologist/MD in General Medicine in the same set up prescribed salary between ₹ 80,000-

90,000/- per month. On retirement from service, the petitioner sent a request letter to the respondent Authorities, which was forwarded to the Director General Health Services, Haryana, for relaxation of age in recruitment norms, which was received on 19.08.2013. As per the operational Guidelines 2010-2012, the job title District Medical Officer (NCD) has fixed age limit of 50 years and remuneration at ₹ 55,000/- per month. After permission of the Director General Health Services, Haryana, the petitioner was appointed on contract basis at ₹ 55,000/- per month. The contract was renewed on yearly basis. The age of Specialist Doctors has been fixed at 65 years to make it easier for filling up the posts under the Central Government sponsored scheme in the State of Haryana. With age relaxation granted for appointment approval was accorded to the appointment of the petitioner. He was issued appointment letter on 03.09.2013 (Annex P-6) as District Medical Officer (Specialist) under NPCDCS scheme for 89 days. The renewals came in 2014, 2015 with tenure extended to 01.04.2016. The Terms of Reference (ToR) for engagement of contractual staff under NPCDCS for the District NCD Cell for CCU and Cancer Care Facility, earmarked one post of Specialist-Cardiology/General Medicine or General Physician with remuneration of ₹ 80,000/- per month and ₹ 60,000/- per month, as the case may be. However, for District NCD Clinic, one post of General Physician was earmarked at ₹ 60,000/- per month and one post in the same category for SDH/CHC Clinic at the rate of ₹ 40,000/- per month.

As per operational Guidelines Block 2013-17 as was informed to the petitioner by the Deputy Civil Surgeon, NCD, Kurukshetra dated 15.06.2016 (Annex P-14), the job title was changed by the Government of India. The engagement in Part C District NCD Clinic Doctor (General

Physician) continues till date with remuneration fixed at ₹ 60,000/- per month, which is the maximum limit as per terms of reference. However, as per the Director General Health Services, Haryana memo dated 04.04.2013, the salary of contractual staff under NPCDCS and NPHCE was fixed at ₹ 55,000/- per month and after giving credit of increase of 5% to the petitioner, he was in receipt of remuneration at the rate of ₹ 57,750/- per month which undoubtedly he received in his pocket after retirement from service. It is the categorical stand of the Deputy Civil Surgeon (NCD), Kurukshetra in his letter dated 15.06.2016 (Annex P-14) that the petitioner was appointed as General Physician and not as a Specialist Cardiology after due permissions accorded by the Director General Health Services, Haryana. It is this communication, which has been impugned in the present petition.

The petitioner claims that he is entitled to remuneration at the rate of Rs.80,000/- per month, as a Specialist Cardiology/MD (General Medicine) pressing for remuneration range of ₹ 80,000-90,000/- and ₹ 60,000-70,000/- per month in the respective categories of Specialist Cardiology/General Physician. The petitioner asserts that he is a MD with 20 years experience as Specialist in General Medicine and his contract renewals have been on this premise. Is the claim for higher remuneration justified, is the question which searches for an answer.

In the advertisement issued on 30.03.2012, the post at Sr.No.5 was of District Medical Officer with remuneration/honorarium of ₹ 55,000/- per month. The essential qualification notified was MD in Medicine or equivalent degree from institutions recognized by the Medical Council of India. It was desirable that applicant should be DM or hold equivalent degree in endocrinology or cardiology with two years experience of working

as Specialist/Super Specialist in a hospital. This advertisement as said earlier was rendered infructuous when no one applied. The second advertisement issued on 21.04.2013 published before the petitioner retired from service called applications for appointment as Consultant Medicine (NPCDCS) with salary of ₹ 55,000/- per month and place of posting in NCD. The qualification required was MD in Medicine, which was reduced qualification obviously with past experience when no taker was found for the job. The process of selection/appointment was by way of Walk-in-Interview to be held on 01.05.2013, which was also a date prior to the petitioner's superannuation. The single post of Consultant Medicine (NPCDCS) was to be filled on contractual basis till 31.03.2014 with job description as aforesaid. It was on the basis of this advertisement that the petitioner applied after retirement on 06.08.2013. The petitioner is a resident of District Kurukshetra where the job was required. It was his request, which was processed with age relaxation granted to the petitioner as permitted by the Director General Health Services, Haryana. The last extension was granted on 01.04.2015, on contract basis as General Physician (under National Health Mission) co-terminus on 31.03.2016. It is categorically stated in the memo dated 01.04.2015 (Annex P-9) that renewal was on the post of General Physician with posting at District NCD Clinic & CCU at District Hospital under NPCDCS components, Kurukshetra on a consolidated salary of ₹ 55,000/- per month. It was stipulated in Clause 6 that there shall be no increase in the salary and the petitioner will not be entitled to any annual increment or allowance etc. As a matter of fact, the offer of appointment would not count as service nor it will bestow upon the doctor any claim for regular appointment against any post. There was an Arbitration Clause 14 that disputes, if any, shall be decided by the Arbitration of the Chairman

DH& FW Society (NCD), Kurukshetra and his decision shall be final and binding. The last working day as per contract was 31.03.2016, when the petitioner would automatically stand relieved. It was stipulated in Clause 21 that contractual engagement is not employment in any manner, but only a contract of work. These terms were accepted by the petitioner and he earned renewals and extension of contract vide memo dated 01.04.2016 co-terminus on expiry of 189th day for the post of General Physician/Medical Officer. A fresh agreement was drawn at Annex P-10 in the shape of a contract on non-judicial stamp paper of ₹ 50/- value duly certified by the Notary Public in respect of contractual offer. The other terms were similar to the previous one. The duties assigned to the petitioner were as General Physician/Medical Officer Specialist or whatever work is assigned.

It may be noted that an order has not been passed and what is impugned is only a response to the petitioner's legal notice dated 31.05.2016 issued to the Collector/Deputy Commissioner, Kurukshetra by reply letter. It is this response, which has been called in question to which detailed reference has been made above and requires no repetition.

The claim of the petitioner is not based on any statutory rule and is dependent on the terms & conditions of the contract. The petitioner may have been a Specialist while in service in the Haryana Civil Medical Services, but he accepted the offer of appointment as Consultant Medicine (NPCDCS) with salary of ₹ 55,000/- per month. He was not appointed on the contractual post as a Specialist Cardiology, but as a General Physician and, therefore, the terms of the contract cannot be altered or varied by judicial fiat. Therefore, I would have no reason to allow this petition and to convert the post of Consultant Medicine (NPCDCS) to a post falling in the

category of Specialist MD in Medicine. The petitioner's past service profile and qualifications have actually got nothing to do with the job offered to him on contract basis and accepted by him on the terms & conditions of job offers, which have been extended on annual basis with presently the last period of engagement having expired. Neither would a writ of certiorari issue to the respondents quashing the reply dated 15.06.2016 nor a writ in the nature of mandamus can issue directing the authorities to grant remuneration at the rate of ₹ 80,000/- per month and to release the arrears of difference of salary and other benefits together with the claimed interest at the rate of 18% per annum on the assumption that the petitioner was appointed a District Medical Officer (Specialist) in Medicine. I find the petition wholly devoid of merit and would order its dismissal.

Consequently, the present petition is dismissed.

22.08.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*