

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 10.11.2016

CWP No. 19712 of 2016(O&M)

Shiv Charan & ors.

... Petitioners

Versus

State of Haryana & ors.

... Respondents

CWP No. 19993 of 2016(O&M)

Sonia & ors.

... Petitioners

Versus

State of Haryana & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ram Niwas Sharma, Advocate,
for the petitioners.

Mr. Hitesh Pandit, Addl. AG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

This order disposes of two writ petitions bearing CWPs No.19712 and 19993 of 2016, as common issues are involved in them which can conveniently be decided by a common order.

Replies filed on behalf of respondents No.1 to 3 in both cases are taken on record. The result is produced in three sealed covers, which have been opened and returned. Most of the petitioners are either successful or in waiting. In these circumstances, the stay order is lifted. The Government is free to publish the result of the selection and offer appointments to the successful candidates. Henceforth, nothing remains to be determined or adjudicated in these petitions and they are disposed of; the claim accepted.

In all fairness to Mr. Hitesh Pandit, Addl. A.G., appearing for the State of Haryana, it is noted that he has expressed the State's anguish

which may result from heavy migration of Staff Nurses and other employees from the respondent-Institute at Mewat to Kalpna Chawla Government Medical College, Karnal, it may lead to paralyzing essential services in Mewat since it would not be possible to make direct recruitment to fill the post, which will be vacated by the successful petitioners on their appointment by transfer in the Kalpna Chawla Government Medical College, Karnal.

Accordingly, in the special circumstances of the case the question arises as to how to strike a balance between public interest and private interest. Ordinarily, the Courts have accepted the principle that private interest must yield to public interest and the search is where the larger public interest lies. But at the same time the petitioners have a valuable right of consideration for appointment by transfer which is fundamental in nature within the obligations placed on the State by Article 16 of the Constitution, where every citizen must be granted equal opportunity in public employment. Public employment would not necessarily mean direct recruitment for the first time entry into service but also for in-service Government employees, who also have an equal right to apply and be considered on merit against public advertisements issued by various departments calling for applications from eligible candidates to fill vacancies in their institutions. As against fundamental rights protection of equal opportunity of participation, I think upholding the right to compete far would outweigh the doctrine of public interest which must give in to private interest in a service matter. Right to career advancement and the freedom to do without let bears characteristics of fundamental rights in the equal

opportunity law. It is for the Court in an action brought before it to understand how best to weigh competing interests, one against the other while applying this principle. I think the argument of Mr. Pandit should not be accepted to deny permission to be leave parent department as it would negate the foundation stones of Articles 14 and 16 of our Constitution, which is the fundamental law when read together in service law. After all, the Kalpna Chawla Government Medical College, Karnal is also a government run institution, so what is the brouhaha about in opposing the petition.

Merely because the Government services have propensity of being paralyzed by such migratory appointments, either direct or by transfer, would be no valid ground to deny relief by permissions from parent department to leave Mewat and join at Karnal. The State has ample wherewithal at its command at short notice to take steps to man services in Mewat by all its available means and it is their problem to solve.

Therefore, the Court should not stand in the way of the petitioners to deny them right of appointment in the new organization especially when many of them have been selected on merit and some have their names figuring in the waiting list. Denial of right at this stage would amount to slavery and frustration of right of choice. The petitioners are not in bondage at Mewat. No fetters can be placed on their rights to tie the petitioners down permanently to their present place of work at Mewat as Laboratory Technician, Staff Nurses etc. of course with the exception of routine posting and transfers within the department concerned. That situation does not arise for the present.

Consequently, I have no doubt in mind after hearing counsel and perusing the result of selection that the petitioners have a case on merits and their petition deserves to be allowed. It is ordered accordingly.

(RAJIV NARAIN RAINA)
JUDGE

10.11.2016
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>