

C.W.P No. 4636 of 2016

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 4636 of 2016

DATE OF DECISION: 17.8.2016

Dr. Bindu Kaushal

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. R.K. Malik, Senior Advocate with
Mr. Kuldeep Sheoran, Advocate
for the petitioner.

Mr. H.S. Sethi, Addl. A.G., Punjab.

DAYA CHAUDHARY, J.

Petitioner-Bindu Kaushal was appointed by way of direct recruitment as HCMS Doctor on 1.4.2003 and continued to work as such upto 9.1.2014. She also worked in the rural area from 29.7.2005 to 29.4.2011. Thereafter, the petitioner was appointed by way of transfer in Punjab Health Services as PCMS Doctor on 9.1.2014 and since then she is continuing there.

Baba Farid University of Health Sciences, Faridkot invited online application for admission to MD/MS/PG diploma courses. The petitioner applied for the same under 60% quota and appeared in the test, which was conducted on 13.2.2016. The petitioner qualified the examination and secured 62 rank. Thereafter, the petitioner applied for NOC

under 60% quota on 16.2.2016. Her application was duly forwarded by CMO, Sangrur on 18.2.2016 to the Director Health Services, Punjab but the same was declined vide order dated 16.3.2016 on the ground that the services rendered by the petitioner in Haryana Health Department cannot not be taken into consideration.

Order dated 16.3.2016 is the subject matter of challenge in the present writ petition.

Learned senior counsel for the petitioner contends that had the services rendered by the petitioner in Health Department, Haryana before her appointment in Punjab by way of transfer been considered, the petitioner would have fulfilled the other conditions prescribed under 60% quota. Learned senior counsel further contends that respondent-Department has granted NOC under 60% quota to similarly situated employees, namely, Dr. Bharat Bhushan and Dr. Virender Garg and as such the action of respondent-Department in not granting NOC to the petitioner being discriminatory, arbitrary, unreasonable is liable to be set aside. Learned senior counsel also contends that the controversy similar to the present case has already been settled by this Court in the judgment of case in **Dr. Johnny K. Gupta Vs. State of Punjab and others** 2012 (2) SCT 116, wherein, it has been held that previous rural service rendered in Haryana Government has to be counted. Similar view has also been taken in another judgment titled as **Dr. Sukhwinder Singh Vs. State of Punjab and others** (C.W.P. No. 4149 of 2011, decided on 21.7.2011). The case of the petitioner is squarely covered by aforesaid two judgments and she is entitled for NOC under 60% quota. As per the eligibility criteria, the candidates who were in service on 1.1.2012 were required to complete five years of service, out of

which, two years should be in most difficult area and three years service should be in difficult areas. The petitioner had rendered service in Rural area from 29.7.2005 to 29.7.2011 and was eligible under 60% quota. Learned senior counsel has also relied upon the judgment of Hon'ble the Apex Court in the case of **K. Madhavan Vs. Union of India** 1987 AIR (SC) 2291, in support of his contentions.

Learned counsel for respondent-State opposes the submissions made by learned counsel for the petitioner and contends that as per terms and conditions of the appointment letter, the petitioner was not entitled for any benefit of previous service of the State of Haryana, hence, the request of the petitioner for grant of NOC was rightly rejected by giving a reasoned finding. The petitioner has worked as Medical Officer in Community Health Centre, Bhawanigarh since 9.1.2014, which is a category 'C' station, whereas, she is required to complete six years rural service in category 'C' station for being eligible for NOC under 60% quota for admission to PG course. The petitioner was on probation for a period of two years and completion of probation period is mandatory for considering her to admission in PG course. The petitioner was not eligible for NOC as she had not even completed her probation period on 16.3.2016. Learned counsel also submits that in CWP No. 7233 of 2008 titled as **Dr. Daizy Sood Vs. State of Punjab and another** decided on 27.2.2013, it was held by this Court that in case the petitioner was appointed by transfer from Haryana and given fresh appointment in State of Punjab, was not found entitled to any benefit for the previous service rendered in State of Haryana. Against the aforesaid decision, LPA No. 856 of 2013 was filed by the petitioner but the same was also dismissed on 9.7.2015. Learned State counsel also submits

that one Dr. Navneet Kaur, who was appointed as Rural Medical Officer, also applied for Post Graduate course under 60% quota and appeared in the test on 13.2.2016 and was placed at merit No. 33. Thereafter she applied for NOC but the same was not granted to her due to non-fulfilling the condition of rural service under 60% quota. On account of non-grant of NOC, she approached this Court by way of filing CWP No. 4703 of 2016 but the same was dismissed on 17.5.2016 by holding that once the petitioner does not fulfill the prescribed eligibility criteria and does not have requisite service period, she had no legal right to claim issuance of NOC. Learned counsel for respondent-State also submits that judgment of Hon'ble the Apex Court in **R. Madhvan's case (supra)** relied upon by learned counsel for the petitioner is not applicable keeping in view the date of joining of the petitioner.

Heard the arguments advanced by learned senior counsel for the petitioner as well as learned State counsel and have also perused the impugned order and other documents available on the file.

Admittedly, the petitioner was appointed as PCMS Doctor in Punjab by way of transfer as initially she was appointed by way of direct recruitment as HCMS doctor on 1.4.2003. It is not disputed that the petitioner rendered service in a rural area from 29.7.2005 to 29.4.2011. On appointment by way of transfer in State of Punjab, the petitioner submitted an application for admission to MD/MS/PG Diploma Courses under 60% quota and she qualified the test by securing 62 position. Thereafter she applied for NOC under 60% quota meant for PCMS Doctors but the request was declined vide order dated 16.3.2016 on the ground that her service rendered in rural area in State of Haryana cannot be considered. The stand

of the respondent-State is that as per terms and conditions of the appointment letter, the petitioner cannot be granted any benefit as it was clearly mentioned in the appointment letter that she will not be given any benefit of past service rendered in State of Haryana. Same controversy was there in **Dr. Daizy Sood's case (supra)**, wherein, it was observed as under.-

“In the light of the definition given in the PCS Rules, it is apparent that the Government employees and Government service would mean an employee of the Government of Punjab and service of the Government of Punjab unless specifically said otherwise. Perusal of Rule 4.4 leaves no manner of doubt that the same is applicable to Punjab Government employees only which has been further required to be read in the context in which policy instructions/letter dated 15.11.2000 makes it applicable to. It expands the applicability of the Rules not only to the Punjab Government Employees, but to those employees who were or are employees of a body incorporated or not which is wholly or substantially owned by the Government as is apparent from para-5 (i) of the said letter. This policy letter, therefore, cannot be extended to an employee who was erstwhile an employee of the State of Haryana. Merely because the petitioner has been appointed under the Statutory Rules by way of transfer, which would give legal sanctity to such appointment, but this does not entitle her to the pay protection and the service benefits which she had earned while working in the State of Haryana, moreso when the offer of appointment

dated 26.12.2001 (Annexure P-4) clearly specifies the pay scale and initial start of pay which petitioner would be entitled to. The appointment of the petitioner was a fresh one as is apparent from the Clauses 2,3 and 4 of the said offer of appointment wherein probation period, fresh medical certificate and verification of conduct and antecedents were to be again done afresh of the petitioner. Petitioner having accepted the offer, as made to her cannot, now claim the benefit of previous service, rendered by her in the State of Haryana. The reliance placed upon the policy decision dated 15.11.2000 (Annexure P-5) by the petitioner for pay protection and other benefits is of no help to the petitioner as the same is not applicable to her case.

In view of the above, finding no merit in the present writ petition, the same stands dismissed.”

The aforesaid decision was challenged by way of filing LPA No. 856 of 2013 but the same was also dismissed. The relevant portion of the judgment is reproduced as under:-

Ld. Single Judge held that these instructions are an explanation to Rule 4.4(i) proviso below Rule 4.4(b) of the Punjab Civil Service Rules. Neither Rule 4.4 nor the instructions dated 15.11.2000 define the term 'Government'. Hence, reliance was placed on the definition of the term 'Government' as given in Chapter II of the Punjab Civil Services Rules. As per Rule 2.24, the term 'Government' means the Punjab Government in the Administrative Department. Thereby, the Ld. Single Judge

concluded that in the light of the definition given in the Punjab Civil Service Rules, Government employees and Government service would mean an employee of the Government of Punjab and service of the Government of Punjab respectively. Rule 4.4 of the Punjab Civil Service Rules is applicable to Punjab Government employees only. The instructions dated 15.11.2000 expand the applicability of the Rule not only to the Punjab Government employee but also those employees, who were or are employees of a body whether incorporated or not, which is wholly or substantially owned by the Government as is clear from para 5(i) of the instructions. This letter cannot be extended to an employee, who was earlier an employee of the State of Haryana. Merely because, the appellant was appointed under Statutory Rules by way of transfer would not entitle her to pay protection and service benefits of the service rendered in the State of Haryana. Moreover, the offer of appointment clearly indicated it to be a fresh appointment, which having been accepted by the appellant, she could not turn around and claim the benefit of her previous service in the State of Haryana.

Learned counsel for the appellant has not been able to demonstrate as to how the benefit of letter dated 15.11.2000 could be availed of by the appellant qua her earlier service in the State of Haryana.

We are in full agreement with the reasoning of the Learned Single Judge that the benefit of past service as per the

letter dated 15.11.2000 cannot be availed of by the appellant, who was earlier serving in the State of Haryana.

Accordingly, there is no merit in the appeal and the same is dismissed.”

In the present case the statutory rules governing the services of the petitioner are “The Punjab Civil Medical Services (Class-II) Rules, 1982” (hereinafter referred to as 'the Rules, 1982”). Direct appointment has been defined under Rule 2 of “the Rules, 1982”, which means that an appointment made otherwise than by promotion or by transfer of a person already in the service of Government of India or of a Government of State. Sub rule (c) defines 'Government', which means the Government of State of Punjab in the Department of Health and Family Welfare. Rule 8 provides method of appointment, according to which, all appointments to the service shall be made by direct appointment, provided that the Government may fill any vacancy by way of transfer of any person already in service of Government of India or of a State Government. Rule 11 provides period of probation of two years for direct appointee. It is clear from the aforesaid rules that the appointment of the petitioner although by way of transfer is a fresh direct appointment as is apparent from the appointment letter.

A perusal of the aforesaid “Rules, 1982” clearly shows that Government employee and Government service means employee of Government of Punjab and service of the Government of Punjab unless specifically said otherwise. Rule 4.4 is applicable to Punjab Government employees only and it is required to be read in the context in which policy/instructions/letter dated 15.11.2000 makes it applicable. It expands

the applicability of the Rule not only to the Punjab Government employees but to those employees who were or are employees of a body incorporated or not which is wholly or substantially owned by the Government. Said policy letter, therefore, cannot be extended to an employee who was earlier an employee of the State of Haryana. Since the petitioner was working in State of Haryana and thereafter she was appointed by way of transfer in State of Punjab and as such it does not entitle her to the benefit of past service rendered in State of Haryana. Moreover, it was specifically mentioned in the appointment letter that the appointment of the petitioner was a fresh one and because of that reason the probation period was also for two years. Even fresh medical examination and verification of conduct and antecedents were got conducted. The petitioner herself accepted the terms and conditions of the appointment letter and offered her services. Accordingly, the petitioner is not entitled for any benefit of her past rural service rendered in State of Haryana and as such she was not issued NOC being contrary to terms and conditions of the appointment letter.

Accordingly, there is no merit in the submissions made by learned senior counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

17.8.2016
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes