

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

CWP No. 4703 of 2016 (O & M)

Date of decision: 17.05.2016

Dr. Navneet Kaur

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

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

Present: Mr. Ashish Verma, Advocate,
for the petitioner.

Mr. Harsimran Singh Sethi, Addl. A.G., Punjab.

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks direction for issuance of NOC/clearance to join the Post Graduate course in Government Medical Colleges of Punjab under 60% quota.

It is the case of the petitioner that she was appointed as a Rural Medical Officer (RMO) on 21.12.2010. Thereafter, she was appointed as a PCMS Doctor and has worked without break from 11.03.2011 to 03.05.2015. Thereafter, she was transferred to Primary Health Center, Mand, where she was working from 04.05.2015. She applied to join the Post Graduate Course under the 60% quota and appeared in the test on 13.02.2016 and was placed at merit no. 33. Thereafter, she applied for NOC on 15.02.2016. On account of non-grant of NOC, she had approached this Court. Thereafter, the order dated 16.03.2016 (Annexure P-5) has been passed whereby, respondent no. 1 has calculated her service period to be 5 years, 8 months and 27 days including her RMO period and accordingly,

reference was not found to be proper due to the non-completion of the condition fixed of rural service under the 60% quota. The said requirement is 4 years for serving in difficult area and 6 years for other rural areas or appropriate combination of both. Resultantly, her application was filed, which has now been challenged by filing the amended writ petition.

Counsel for the petitioner has vehemently argued that seats are going waste and vacant in the 60% quota for in-service candidates and referred to the earlier communication for the year 2013 dated 18.06.2013 (Annexure P-6) that the seat should be utilized by the Health Department for the services of the Post Graduate Doctors in order to provide secondary level service. It is accordingly submitted that for the earlier years also, similarly situated persons who had not completed the requisite period of 72 months in category 'C' and 48 months in category 'D' had been permitted to apply and were given NOCs.

State, in its reply, has submitted that due weightage has been given to the category 'D' service and thereafter calculation has been made whereby the petitioner is falling short of the requisite 6 years (72 months) and has been held not eligible for consideration. It has been submitted that no relaxation had been given in the year 2016 regarding completion of rural service by Doctors seeking admission in 60% quota for in-service. The rounding off cannot be done, as has been argued, as per the placement policy. The defence of the State is that the rounding off criteria is for transferring Medical Officers and not for the purposes of counting the eligibility criteria.

After hearing counsel for the parties, this Court is of the opinion that once the petitioner admittedly does not fulfill the prescribed

eligibility criteria and does not have the requisite period, she would have no legal right as such to claim the issuance of NOC. Merely because for an earlier year any such relaxation had been considered or was granted, would not give any right to the petitioner. It has been specifically averred by the State that no relaxation had been granted this year.

Similarly, if any person who did not have the prescribed rural service period but was adjusted in earlier years, would not give a right to the petitioner to claim on that basis. It is settled principle that Article 14 of the Constitution of India cannot be enforced by way of negative equality and make ineligibles eligible. The petitioner not fulfilling the qualifications/eligibility clauses, thus, cannot claim a writ of mandamus which can only be issued for grant of a legal right, which on the face of the record, does not exist in favour of the petitioner.

Accordingly, the present writ petition is dismissed.

17.05.2016
shivani

(G.S. SANDHAWALIA)
JUDGE