

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-1745-2016 (O&M)

Date of Decision: September 15, 2016

Dr.Bindu Kaushal

.....Appellant

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present: Mr.R.K.Malik, Sr.Advocate with
Mr.Bhupinder Malik, Advocate
for the appellant.

Mr.Rajesh Bhardwaj, DAG, Punjab.

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SURYA KANT, J.

[1] This Letters Patent Appeal assails the order dated 17.08.2016 whereby learned Single Judge has dismissed the appellant's writ petition in which she sought a direction for issuance of 'No Objection Certificate' to her for admission to MD/MS Course against 60% in-service quota. The appellant has not been issued 'No Objection Certificate' for want of five years rural service in the State of Punjab. Her case is that since she has been appointed to Punjab Health Services as a PCMS Doctor on 'Transfer Basis' from the Health Department, Haryana and she has already served in rural area for more than six years in Haryana State, she should be treated eligible for the subject admission.

[2] It is not in dispute that the appellant served in the State of Haryana for 9 years as a HCMS Doctor, out of which 6 years was in the rural

area. Thereafter she was appointed in Punjab Health Services by way of transfer and now she is serving as a PCMS Doctor. She applied for admission to MD/MS Course under 60% in-service quota and as per her merit, she has got admission in MD (Anesthesia) since 18.05.2016. Her parent department in State of Punjab however, declined to issue 'No Objection Certificate' on the premise that she has not worked for five years in rural area after her appointment in State of Punjab. It may be noticed that for the purpose of admission against 60% in-service quota, it is one of the eligibility condition that the incumbent must have served in the rural area for five years.

[3] In this backdrop, the question that arises for consideration is whether the service rendered by appellant in 'rural area' of Haryana is sufficient to earn eligibility for admission to MD/MS Course in the State of Punjab?

[4] We find that such an issue has already been answered by a learned Single Judge in favour of the appellant in **Dr.Johny K.Gupta vs State of Punjab and others** 2012 (7) SLR 838. Again the same issue arose for consideration before one of us (Surya Kant, J.) in CWP No.4149 of 2011 decided on 21.07.2011 (**Dr.Sukhwinder Singh vs State of Punjab and others**) where also the writ –petitioner Dr.Sukhwinder Singh was appointed in the State of Punjab by way of transfer from Health Department, Haryana. There the claim of Dr.Sukhwinder Singh was admitted by the respondents and consequently 'No Objection Certificate' was issued in his favour for doing PG Degree Course.

[5] We see no reason for the respondents to adopt a different yard-

stick in the case of the appellant as she has also statedly served in the rural area of Haryana for six years and if such service is acknowledged, she is surely eligible to get 'No Objection Certificate' issued for doing MD/MS Course in which she has already been admitted. We may also notice that there is no change in the Policy decision or Rules to justify a different stand taken by the respondents in this case.

[6] Ignoring the precedents cited above, it may be seen that where the appointment is by way of 'Transfer' it essentially means from one service to another. There is no fresh recruitment. There is no direct competition and it is on the basis of on-going service that the incumbent is treated eligible for appointment and is taken or shifted from one service to another. In such a situation while the authorities can legitimately put the appointee on probation under the Rules and refuse to count such service for seniority as it might affect the already in service incumbents but to say that such service will be completely obliterated even for an experience in a particular field, would be wholly unjustified. When a doctor is required to serve in the rural area and he/she has actually served in the rural area while in previous service, such service cannot be ignored or overlooked on appointment by way of transfer to other service.

[7] We, thus, hold that the appellant's rural service rendered in the State of Haryana before her transfer to the State of Punjab deserves to be counted towards eligibility in the context where experience to serve in rural area is required.

[8] There is another reason for us to hold in favour of the appellant. She has already got admission in MD Course. There is no other candidate

who has come forward to seek admission against that seat. In case 'No Objection Certificate' is not issued, the seat against which the appellant has been admitted would go waste.

[9] For the reasons afore-stated, we allow this appeal; set aside the order of learned Single Judge and accept the appellant's claim. Consequently respondents are directed to issue 'No Objection Certificate' to the appellant to enable her to pursue the MD Course to which she has already been admitted. Meanwhile, the appellant shall be permitted to attend the classes.

**(SURYA KANT)
JUDGE**

September 15, 2016
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**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No