

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

CWP No.13711 of 2016

Date of Decision:22.02.2017

Dr. Richa Kansal and others

... Petitioners

Vs.

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Sushil Jain, Advocate for the petitioners.

Mr. Karan Sharma, A.A.G. Haryana.

Mr. Amit Rao, Advocate for respondent No.5.

P.B. BAJANTHRI J. (Oral)

In the instant petition, the petitioners have questioned the validity of the order dated 11.7.2016 (Annexure P-9) and condition No.11 imposed in the order of appointment issued to petitioners on 19.2.2015 vide Annexure P-1. They have further sought for a writ of mandamus directing the respondents to issue no objection certificate for the purpose of selection and appointment to the post of Assistant Professor in the Kalpana Chawla Government Medical College, Karnal.

Petitioners are stated to have initially appointed as Assistant Professors in BPS Government Medical College for Women, Khanpur Kalan, Sonapat on 19.2.2015 on probation for a period of two years from the date of joining which can be extended, if necessary, upto three years. While issuing appointment order, certain conditions were imposed. One of the condition which is relevant for the purpose of deciding the present petition reads thus: "That no NOC would be given till the completion of probation period".

The Kalpana Chawla Government Medical College, Karnal advertised the posts of Assistant Professor and other posts. The petitioners were candidates for the selection and appointment to the post of Assistant Professor. At the time of interview, the petitioners were directed to furnish no objection certificate. Petitioners approached the BPS Government Medical College for Women, Khanpur Kalan, Sonapat for issuance of no objection certificate to participate in the process of selection and appointment to the post of Assistant Professor in the Kalpana Chawla Government Medical College, Karnal. The same was rejected on 11.7.2016 vide Annexure P-9. Thus, the petitioners have present this petition.

Learned counsel for petitioners submitted that insofar as challenge to condition imposed in the order of appointment dated 19.2.2015 to the extent that No NOC would be given till the completion of probation period is highly arbitrary and illegal for the reasons that petitioners are participating in the process of selection and appointment to the post of Assistant Professor in different college. Both the colleges where petitioners are working as well as the post which was advertised are part of the State Government. Therefore, no NOC would be given till the completion of probation period is violative of Article 14 and 16 of the Constitution and it is arbitrary. It was further contended that in identical circumstances, the respondents have granted no objection certificate. Thus, there is a discrimination in not giving no objection certificate for the purpose of participation of the petitioners in the process of selection and appointment to the post of Assistant Professor in the Kalpana Chawla Government Medical College, Karnal. Therefore, impugned condition imposed in the order of appointment and Annexure P-9 dated 11.7.2016 are liable to be set

aside.

On the other hand, learned counsel for the respondents-State vehemently contended that the reason for imposing the condition of no objection certificate would not be granted during the probation period is a policy decision and such condition was imposed way back on 19.2.2015. The same has not been challenged as and when appointment order is issued. Therefore, challenge to the said condition is impermissible at this distance of time since petitioners have accepted order of appointment with conditions stipulated therein and almost completed two years of service in the BPS Government Medical College for Women, Khanpur Kalan, Sonapat. In terms of condition imposed in Annexure P-1 order of appointment dated 19.2.2015, rightly the official respondents have taken a decision that petitioners are not entitled for no objection certificate during their probation period.

Heard learned counsel for the parties.

Petitioners were appointed on 19.2.2015 to the post of Assistant Professor. They have accepted the order of appointment knowingly that they are not entitled for no objection certificate before completion their probation period. Having accepted the order of appointment in toto, they cannot now challenge the condition imposed i.e. “ That No NOC would be given till the completion of probation period.” The cause of action accrued to petitioners way back on 19.2.2015 the date on which they were appointed. Till 13.7.2016 i.e. the date of filing of the writ petition, they do not challenge. In the guise of participation to the post of Assistant Professor in the Kalpana Chawla Government Medical College, Karnal, they have challenged the condition imposed in order of appointment dated 15.1.2016. Therefore,

they are estopped from challenging condition No.11 at this distance of time.

Therefore, there is no arbitrariness in imposing the condition that No NOC would be given till the completion of probation period. The BPS Government Medical College for Women, Khanpur Kalan, Sonapat has to run the college and administration with the adequate staff. Therefore, the petitioners cannot abruptly seek NOC and leave the job.

In view of these facts and circumstances, there is no arbitrariness whatsoever is forthcoming from condition No.11 imposed in the appointment order. Thus, petitioners have not made out a case so as to interfere condition No.11 imposed in the order of appointment and the order dated 11.7.2016 (Annexure P-9)

Accordingly, petition stands dismissed.

22.02.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No