

CWP No.25544 of 2016

Gurpreet Kaur
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***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.***

CWP No.25544 of 2016

Date of Decision: 04.10.2017

Dr. Chandan Jain and others

....Petitioners

Versus

State of Punjab and others

....Respondents

CWP No.25772 of 2016

Dr. Nancy Arora

....Petitioner

Versus

State of Punjab and others

....Respondents

CWP No.13235 of 2016

Dr. Manita and others

....Petitioner

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. D.S. Patwalia, Sr. Advocate
with Mr. B.S. Patwalia, Advocate
for the petitioners in
CWP Nos.25544 of 2016 and 25772 of 2016
for respondents No.2 to 5 in
CWP No.13235 of 2016.

Mr. R.K. Malik, Sr. Advocate
with Mr. Ramandeep Singh, Advocate
for the petitioners in
CWP No.13235 of 2016
for respondents No.2 to 4 in
CWP No.25772 of 2016 and
CWP No.25544 of 2016.

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

DAYA CHAUDHARY, J.

By this judgment of mine, three petitions bearing ***CWP***

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No.25544 of 2016, CWP No.25772 of 2016 and CWP No.13235 of 2016

shall be disposed of as common question of law and facts are involved.

CWP No.25544 of 2016 has been filed by the petitioners, namely, Dr. Chandan Jain, Dr. Manpreet Singh, Dr. Sapna and ***CWP No.25772 of 2016*** has been filed by petitioner-Dr. Nancy Arora for quashing of order dated 30.11.2016 (Annexure P-7 colly), vide which, the respondent-State has cancelled the NOC issued to them to pursue their Postgraduate Course in Dental Sciences and has directed them to report for joining as Medical Officers (Dental).

CWP No.13235 of 2016 has been filed by petitioners, namely, Dr. Manita, Dr. Karanveer Singh Saluja and Dr. Simranjeet Kaur Mehra for quashing of order dated 09.06.2016 (Annexure P-4) and for issuance of appointment letters to the petitioners as Medical Officers (Dental) against vacant posts.

However, for the sake of convenience, the facts are being derived from ***CWP No.25544 of 2016***.

The present petition has been filed for issuance of a writ in the nature of *certiorari* quashing the impugned order dated 30.11.2016 (Annexure P-7 colly.), whereby, the respondent-State has cancelled the 'No Objection Certificate' issued to the petitioners to pursue their Postgraduate Course in Dental Sciences and had directed them to report for joining as Medical Officers (Dental), the post against which they were appointed after their selection. A prayer has also been made for issuance of direction to the respondents to allow the petitioners to complete their Post-graduation in accordance with 'No Objection Certificate' issued to them vide order dated 09.06.2016 (Annexure P-4 colly).

Briefly, the facts of the case, as made out by the petitioners in the present petition, are that 40 posts of Medical Officer (Dental) were advertised vide advertisement dated 24.09.2015. Petitioners applied for said posts and they were selected. Petitioners, at the time of appointment as Medical Officer, were pursuing their post-graduation studies in Dental Sciences from different Colleges. They submitted applications requesting the respondents for extension in joining on the selected posts which were duly considered vide order dated 09.06.2016. The No Objection Certificates were issued to the petitioners to pursue their post-graduation studies subject to certain conditions that the petitioners were not to be granted salary and other allowances for said period subject to executing a bond for an amount of Rs.15 lacs guaranteeing that they would join as Medical Officers on completion of their MDS courses, failing which, they would be liable to forfeit the surety bonds furnished by them to the respondent-State. The 'No Objection Certificate' was issued in view of policy decision taken by the respondent-State vide notification dated 22.05.2014. The conditions were accepted by the petitioners including of furnishing surety bonds amounting to Rs.15 lacs. Subsequently, vide impugned order dated 30.11.2016, the respondent-State had withdrawn the 'No Objection Certificate' of the petitioners and directed them to join their duties within a period of seven days. It was also mentioned that in case, they did not join within seven days, it would be presumed that they were not interested in their appointment as Medical Officers (Dental) and their names would be removed from the list of selected candidates. The impugned order dated 30.11.2016 (Annexure P-7 colly) is subject matter of challenge in the present petition.

Learned senior counsel for the petitioners submits that the

impugned order has been passed without affording any opportunity of hearing, whereas, 'No Objection Certificate' was issued to the petitioners after taking into consideration the applications submitted by them with certain terms and conditions. The impugned order is liable to be set aside on the ground that the respondents have failed to follow the principles of promissory estoppel as the 'No Objection Certificate' which was issued to the petitioners to complete their post-graduation studies, cannot be permitted unilaterally to withdraw the NOC being disadvantageous to the petitioners. Learned counsel also submits that the impugned order has been passed just to give benefit to the candidates, who are in the waiting list. Petitioners are much more meritorious *viz-a-viz* private respondents. Learned senior counsel also submits that the private respondents have no legal right to challenge the 'No Objection Certificate' as the same has been issued to them after issuance of appointment letters. At the end, learned senior counsel submits that the posts are lying vacant with the respondent-department and private respondents can be considered against those posts and no prejudice is going to be caused to them.

Separate reply on behalf of respondent No.1 and 2 to 4 have been filed which are on record.

Learned State counsel has not disputed regarding issuance of 'No Objection Certificate' and granting of extension in joining time to the petitioners to facilitate them to complete their Post Graduate Studies. Said 'No Objection Certificate' was withdrawn subsequently in view of directions issued in **CWP No.22953 of 2012** titled as **Dr. Varun Nayyar and others vs State of Punjab and others** decided on **20.12.2013**. In pursuance of directions issued in the said petition, the matter was

re-considered and 'No Objection Certificate' issued to the petitioners was withdrawn. Learned State counsel also submits that reasons were mentioned in the order and it cannot be said that the same was non-speaking in any manner. Learned State counsel has not disputed regarding the fact that some posts are still lying vacant.

Mr. R.K. Malik, learned senior counsel for respondents No.2 to 4 submits that the controversy in the case in hand has already been settled by this Court in **Dr. Varun Nayyar's** case (supra). Learned senior counsel also submits that respondents No.2 to 4 have no objection, in case, the present petition is disposed of with the same directions as issued in **Dr. Varun Nayyar's** case (supra).

Heard the arguments of learned counsel for the parties and have also perused the documents available on file including the impugned orders of withdrawal of 'No Objection Certificate.'

Facts relating to publishing of advertisement; selection of petitioners and thereafter, issuance of 'No Objection Certificate' on the basis of applications submitted by them for extension of time to undergo post-graduate course subject to furnishing surety bonds to the satisfaction of respondent authorities with certain terms and conditions, are not disputed. It has also not been disputed by learned State counsel that the posts are still lying vacant.

The relevant portion of judgment passed in **Dr. Varun Nayyar's** case (supra) is reproduced as under :-

“ For the reasons recorded above, the instant writ petition is allowed. The impugned order dated 25.10.2012 (Annexure P-6) is set aside to the extent of grant of extension in joining time to private respondents

no.8 to 12. It is directed that the petitioners be offered appointment to the post of Medical Officers (Dental) against the vacant posts earmarked for the General Category. Such offer would be made strictly as per merit determined in the selection process and if any other candidate has secured a higher merit position than the petitioners, then, such candidate would have a prior claim.

*In so far as respondents no.8 to 12 are concerned, since they have executed bonds of an amount up to Rs.15 lacs in pursuance to the order dated 25.10.2012, it would be open for the respondent-authorities to permit them to join against other unfilled posts after completion of their Post Graduate studies or against vacancies that arise on account of promotions/retirements that would occur during the intervening period. Such protection is being afforded to respondents no.8 to 12 by following the view taken by a Coordinate Bench of this Court in the order dated 10.3.2010 while deciding **CWP No.12839 of 2009 titled as Dr. Sohrab Arora and others vs State of Punjab and others.**”*

It is not disputed that the applications moved by the petitioners for extension in joining were allowed by the respondent-State and they were allowed to undergo their post graduation studies. The petitioners were issued 'No Objection Certificate' to complete their studies with certain terms and conditions. Subsequently, without affording any opportunity of hearing, the 'No Objection Certificate' was withdrawn. The candidates like the private respondents are in the waiting list and they cannot be allowed to work against the candidates like the petitioners as not only they have duly been selected and appointed but are more meritorious viz-a-viz private respondents. It is also relevant to mention here that once an appointment

letter has been issued and the appointment has been made against a particular post, then the same cannot be offered to other candidates, who are lower in merit or even to the candidates, who are in the waiting list. It has not been disputed by learned counsel for the respondent-State that the posts are still lying vacant and in case, the private respondents are appointed against said posts, they would be satisfied. Similar issue was there in **Dr. Sohrab Arora's** case (supra), wherein, the following order was passed :-

“ Having heard learned counsel for the parties and following the view taken by this Court in the cited decisions, it is apparent that no direction to the respondents to keep the posts unfilled for the petitioners till they complete their Post Graduate Diploma/Degree courses, can be issued. However, owing to the fact that even according to the respondents, the posts of Medical Officers are lying vacant at large scale, the respondent-authorities shall be at liberty to permit the petitioners to join against the other unfilled posts after completion of their PG diploma/degree course, provided that the petitioners apply in writing within a period of one month from the date(s) of completion of their Post Graduate Diploma/Degree. Suffice it to observe that such an application shall be considered by the respondents sympathetically and keeping the fact in view that additional appointments would also serve the larger public interest.”

In the present case also, the posts are lying vacant and claim of the private respondents can be considered against those vacant posts.

Accordingly, the present petitions are allowed and the impugned order dated 30.11.2016 (Annexure P-7 colly.) passed in **Civil Writ Petition Nos.25544 of 2016, 25772 of 2016** as well as order dated 09.06.2016 (Annexure P-4) passed in **Civil Writ Petition No.13235 of 2016** are hereby quashed and the respondent-State is at liberty to consider the

case of private respondents against un-filled posts within a period of one month from the date of receipt of certified copy of the order.

The writ petitions are allowed with the aforesaid directions.

04.10.2017
gurpreet

(DAYA CHAUDHARY)
JUDGE

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