

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

CWP No. 939 of 2012
Date of decision: 09.11.2017

Dr. Jitender Kumar Jakhar and othersPetitioner(s)

Versus

State of Haryana and others ...Respondent(s)

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

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Bhupinder Malik, Advocate for the petitioner (s)
in CWP-939-2012, CWP-231-2014.

Mr. Nitin Rathee, Advocate,
for the petitioner (s) (in CWP-21595-2015).

Mr. Madan Pal, Advocate for the petitioner (s)
in CWP-27116-2015, CWP-27126-2015.

Ms. Shruti Jain Goyal, AAG, Haryana.

Mr. Rajesh Hooda, Advocate for the respondent No.3
in CWP-939-2012 & CWP-231-2014.

Mr. Ramesh Hooda, Advocate
for respondent Nos. 4 and 5 (CWP Nos. 21595, 27116 and
27126 of 2015).

G.S.SANDHAWALIA, J. (Oral)

The present judgment shall dispose of five writ petitions i.e.
CWP Nos. 939 of 2012; 231 of 2014; 21595, 27116 and 27126 of 2015
since common questions of facts and law are involved in all the writ
petitions. Facts are being taken from ***CWP No. 939 of 2012, Dr. Jitender
Kumar Jakhar and others vs. State of Haryana and others.***

The petitioners challenge the action of the respondents
whereby, the request for relieving the petitioners for joining as Assistant
Professors in the respective departments in PGIMS, Rohtak has been
declined vide order dated 11.01.2012 (Annexure P-10). The reasoning
given is that the officers would be released only after depositing the bond

amount in the Government treasury.

The case of the petitioners is that they had been appointed as HCMS Doctors between periods ranging from the year 1997 to 2000. They were admitted against Post Graduate Courses against the HCMS quota (40% State quota) in the Forensic Medicine Department, PGIMS, Rohtak and completed the said courses from periods ranging from 2006 to 2010. It is not disputed that they have executed a bond in favour of the State dated 05.03.2007 (Annexure P-1) whereby, a sum of Rs.7,00,000/- was agreed to be paid in case the service to the State in the HCMS cadre for a period of 7 years was not completed after return to duty. The said bond was executed at the time the post graduate course was to start. The policy in pursuance of which the bond was undergone and executed is dated 24.02.2006 (Annexure P-16). It is pertinent to notice that neither the terms of the bond nor the policy is subject matter of challenge in the writ petition.

The argument of the senior counsel for the petitioner is that one Gajender Singh has been given the benefits and allowed to join the PGIMS, Rohtak vide communication dated 20.08.2008 (Annexure P-8) wherein, he could either deposit the bond money or has to serve in PGIMS, Rohtak till 14.05.2013 and his lien was not to be retained in the HCMS cadre. Reliance has also been placed upon the fact that one Dr. Deepak Jain had also been given the benefit that he would complete the remaining bond period with the PGIMS, Rohtak. Accordingly, senior counsel for the petitioner has submitted that in view of the decision of the Union of India (Annexure P-2) that the bond could be enforced with the new employer if it was a State Government Undertaking/Organization, the petitioner should also be given the necessary relief. Similarly, reliance has been placed upon letter dated

06.01.2012 (Annexure P-17) to submit that when the service of the experts is required, decision has been taken that the bond period can be relaxed as the services done in the medical colleges would be considered as the service of Haryana Government. Resultantly, reliance has been placed upon the deputation orders (Annexures P-18 to P-20) wherein, certain Professors and Assistant Professors have been deputed with the medical colleges in the State.

In contrast, the stand of the State is that the petitioners had executed a bond in the favour of the State of Haryana to render service to the State Government in HCMS after return to their duty for 7 years or in lieu thereof, deposit of Rs.7,00,000/-. On selection as Assistant Professors at PGIMS, Rohtak on 29.12.2011 (Annexure P-4), they left the State services by breaking their bonds and are liable to pay the said amounts for breach of the bond as the PGIMS, Rohtak was an autonomous body. The post of Assistant Professor falls under the Haryana Civil Medical Education Services Cadre, which is different from the HCMS cadre and, therefore, PGIMS, Rohtak could not accept the bond for the remaining period. Resultantly, the petitioners are bound to pay Rs.7,00,000/- for the breach of the bond.

Qua the issue of discrimination, it is submitted that Dr. Gajender Kumar was issued No Objection Certificate on 14.02.2008 and at that time, PGIMS, Rohtak was in the administrative control of the Health Department of the State Government and with the same administrative department. It was upgraded as an autonomous institute on 02.06.2008 (Annexure P-11) and, therefore, it was justifiable to ask the said Doctor for completing the remaining period of bond period at another institute under

the administrative control of the same administrative department.

Similarly, qua Dr. Deepak Jain, whose name also finds mention in the impugned order (Annexure P-10) and who has also been declined the necessary permission, it was mentioned that it was subject to the decision of the present writ petition which would be clear from Annexure P-13 and wherein, it had also been mentioned that he would complete the remaining bond period in PGIMS, Rohtak. It had been clarified vide communication dated 19.08.2015 (Annexure R-1/1) that the condition of the bond period has been withdrawn. Accordingly, reference is made to the letter dated 19.08.2015 wherein, decision was taken to remove the condition that he would complete the remaining bond period in PGIMS, Rohtak. Resultantly, he has also been put at par with the present petitioners and the decision of the present case would also be binding upon him.

The defence is that the MBBS Doctors pertaining to HCMS cadre are being given preferential treatment by way of 40% quota in the medical colleges of the Government of Haryana as well as certain other medial colleges. During the post graduate courses, they are paid full salary, increments, ACPs and other service benefits including seniority. The State Government spends lot of money making the MBBS Doctors post graduate degree holders. The facilities are granted in lieu of the bond executed for serving the State of Haryana in HCMS cadre for a period of 7 years. The tendency to migrate at the cost of the State Government and leave service after becoming post graduate, therefore, defeated the purpose of the policy whereby, 40% of the seats were reserved. The health services were being affected in the government hospitals which was being frequented by poor segments of the society.

Regarding the letter dated 06.01.2012 (Annexure P-17), it was justified that new medical institutions namely Bhagat Phool Singh Government Medical College for Women, Khanpur Kalan, Sonapat and Shaheed Hassan Khan Government Medical College, Nalhar, Nuh were being set up. To make their establishments functional, Doctors from HCMS cadre were being allowed to take new appointments by relaxing the bond conditions and in such circumstances, certain Assistant Professors had been allowed to join. It was also mentioned that deviation from the policy was only in case for establishing new medical institutes and also as per directions of this Court.

After hearing counsel for the parties, this Court is of the opinion that the petitioners cannot wriggle out of the bonds which they have executed on their own after taking the benefit of 40% quota of the State quota. It is not disputed that as per policy dated 24.02.2006 (Annexure P-16) which provides for higher studies for Doctors certain benefits were granted under clause 'C' against the reserved seats. The conditions read as under:-

“C. Sponsorship of the candidates for higher studies against reserved seats.

Presently, certain number of seats are reserved in the PGIMS Rohtak for PG Diploma/PG Degree courses for the in service employees of HCMS. The cases of in services candidates for higher studies against reserved seats will be regulated as follows:-

i) He/She must have completed the probation period successfully and completed three years service under the State Government including the probation period out of which two years service should be in rural areas.

(ii) *There should be nothing adverse against the integrity and efficiency.*

(iii) *His service can be spared by the employer for the duration of course without adversely affecting the larger public interest.*

iv) *In addition to the above, if a Doctor has already studied for a PG Diploma course in any subject under the Government Scheme as an in service candidate, he will be considered for grant of No Objection Certificate only for the PG degree course in that very discipline subject provided he has completed the period of bank guarantee/bond period while proceeding for diploma course.*

v) *That in service candidates, who already has PG Degree to their credit in any subject and want to do a diploma course in the same subject or in any other subject, will not be considered for issuance of NOC.*

vi) *A Doctor who has completed a PG Diploma course in any subject and wants to go in for POG degree course in a subject other than the one in which he has done the diploma, will not be considered for No Objection Certificate.*

2. *After the NOC is issued to the application, his admission will be governed by the rules of institution/university. However, the candidate will have to appear in the entrance test conducted for admission to the relevant course and obtain minimum 50% marks in order to be eligible for admission to the course.*

3. *Once the candidate sponsored against the reserved sets and succeeds in getting admission to the said course; he will be required to take the following steps;*

i) *He will have to apply for the study leave/leave of kind due for the duration of the course of study. The leave period will be considered for the*

duration of the course by the competent authority.

ii) Consequent upon sanctioning of leave and before his relieving from the department, he/she will have to submit a bank guarantee of 7 lacs in the case of degree course/Super Specialty Course and Rs. 5 lacs in case of diploma Courses. He will serve the Government of Haryana for the period of minimum period of 7 years for PG Degree/Super Specialty and for the period of minimum period of 5 years in case of a PG Diploma Course.”

Being well aware of the above terms and conditions and what was to govern them, they had taken the benefit of the post graduate admissions. It is thereafter they executed the bond (Annexure P-1) whereby, two sureties also joined in to ensure the Government that they would serve the Government for 7 years in the HCMS cadre. The terms of the bond read thus:-

“Know all these men by the present that I Dr. Jitender Kumar S/o Sh. Ghisa Ram Jakhar resident of H. No. 2/9 Old Housing Board Colony Sikar, Rajasthan and permanent resident is H. No. 2/9 Old Housing Board Colony Sikar, Rajasthan at present employed is resident in Department of Forensic Medicine at Pt. B.D. Sharma, PGIMS, Rohtak/Office Directorate of Health Sciences, Haryana. Govt. of Haryana (hereinafter referred to is 'the obligor'

1. Sh. Dhoop Singh S/o Sh. Rama Nand and Smt. Kamla Devi W/o Wh. Banwari Lal (hereinafter jointly and severally referred to as the sureties do hereby jointly and severally bind overselves and over respective heirs executors and administrators to pay the Govt. of Haryana (hereinafter referred to as the Govt.) on demand of sum of Rs. 7,00,000/- (Rupees Seven Lacs only) together with interest thereon from

the date of demand of Govt. rates of the time being in force on Govt. Loans.

2. *Dated this 5th March, 2007 at Behal (Bhiwani) whereas the govt. has selected the obligor to undergoing P.G. course in Forensic Medicine Department at PGIMS Rohtak for the period of from 11th May 2006 to 10 May 2009 at the cost of Haryana Govt. on the conditions and the sureties furnishing the bond as in herein contained and where as in consideration aforesaid the obligor and the sureties have executed the above written bond.*

Now the conditions of the above written obligation is such that if the obligor shall return to duty after the expiry or termination of the period of the said training and he shall serve the state Govt. in HCMS cadre for a period of seven years after his return to duty then the above written bond shall be void but otherwise it shall remain in full force and virtue.

Provided always that the liability of the sureties hereunder shall not be impaired or discharged by reason of time being granted or by any for bearanceact or omission of the Govt. or any person authorized by them (whether with or without the consent or knowledge of the sureties) now shall it be necessary for the Govt. to see said obligor before seeing the sureties or any of them for the amount due herein under:-

The stamp duty of any leviabale on this bond shall be born by the Govt. signed and delivered by the above bounded persons in the presence of witnesses.”

As noticed, neither the policy nor the bond is under challenge and could not have been because the petitioners were themselves beneficiaries of the same and rather estopped from raising challenge. The contract was entered with open eyes. Merely because they have got better opportunities of employment and have got appointments as Assistant

Professors in a different cadre with respondent no. 3, they cannot turn around and challenge the denial which has been done validly by the respondents on the basis of the bond executed between the parties inter se. The decision not to grant permission is only they will be relieved after depositing the bond amount in the Government treasury. The same reads thus:-

“In reference to your letter no. 78/J (268) 5E-11-2011/1,2,3 dated 2.1.2012 and 78/D(184)-1E5-2011/3, 23 dated 4.1.2012.

After considering the request for relieving Dr. Jitender Kumar Jakhar, Dr. Naresh Pal, Dr. Isha Malik, Dr. Deepak Kumar Jain and Dr. Jasminder Singh for joining as Assistant Professors in their respective department in PGIMS Rohtak. The Govt. had decided to file and give the instructions that the above said officers will be relieved only after depositing the bond amount in the Govt. Treasury.”

It is, thus, apparent that the State is only acting as per the terms and conditions of the bond inter se the parties and, therefore, no fault as such can be found in the absence of any challenge raised to the policy or to the bond which even otherwise, in the opinion of this Court, the petitioners would be estopped from challenging.

State has placed reliance upon the judgment in ***Dhirendra Chhetri vs. UOI and others, 2014 (2) RSJ 75*** wherein also, a similar issue of NOC not being issued was subject matter of challenge. Denial to the NOC was held justified on the ground that the person was serving with the General Reserve Engineer Force (GREF) and wanted to join an equivalent post in Payjal Nigam, Uttarakhand. It was held that on account of the policy dated 21.05.2010, no objection could not be granted as there was a shortage

as such of employees which was engaged in the construction of roads and bridges in border areas. The reasons given are as under:-

“8. The decision to ban outside employment in the light of policy dated 21.5.2010, Annexure P3, cannot be construed to be without basis. Such decision would fall within the ambit of policy making which would lie exclusively within the domain of the executive. The scope of judicial review in such matters would be minimal. The petitioner has not been able to make out a case that the policy dated 21.5.2010 is based on extraneous reasons or that such policy lacks any objective.

“9. There is yet another aspect which would hold this Court back from interfering in the matter. GREF is a Border Roads Organization. It is engaged in sovereign functions in the nature of construction of roads and bridges in the border areas. The policy dated 21.5.2010 at Annexure P3 relates to the Organizational requirements and which is directly related to the security of the Nation. In such circumstances, this Court in exercise of its writ jurisdiction would not issue directions to a para-military force to issue a 'No Objection Certificate' to an employee which would run counter to a policy decision taken in the interest of the security of the nation.

10. Even the plea raised on behalf of the petitioner as regards discrimination is without any force. Such action has been justified in the light of the averments made in the written statement wherein it has been stated that Bhola Prasad while holding a lower post had applied for the post of Junior Engineer (Civil) in the Irrigation Department, whereas the petitioner was seeking 'No Objection Certificate' to join on an equivalent post outside the Organization. Ostensibly,

an exception has been carved out only in case of employees as regards issuance of 'No Objection Certificate' wherein such employees would stand to gain by joining on a higher post. The case of the petitioner, admittedly, is on a different footing.

11. For the reasons recorded above, I find no merit in the instant writ petition and the same is, accordingly, dismissed.

In the present case also, the reasoning given is that on account of the shortage which is being faced by the department for running government hospitals or on account of shortage of specialist Doctors and specially the ones in the present case, who have taken the benefit of post graduate course on the strength of HCMS quota, it cannot be said that the decision not to grant permission is unjustified in any manner.

The fact remains that PGIMS, Rohtak is a separate autonomous body, which would be clear from the notification dated 02.06.2008 (Annexure P-11) and the argument as such which is raised by the petitioner that it is part and parcel of the State and, therefore, the petitioners should be allowed to continue on their employment therein is also without any basis. The issue of the violation of Article 14 of the Constitution of India also has been adequately rebutted by taking the plea that Dr. Gajender Singh as such had been given NOC which was on 14.02.2008 and which was prior to the setting up of the institute on 02.06.2008. As noticed, specific averment was made that it was not another institute but under the administrative control of same administrative department and, therefore, no such grouse can be raised on the issue of parity. The said letter dated 14.02.2008 (translated version) reads as under:-

“Government grants permission to Dr. Gajender Singh to apply for the post of Assistant Professor

(Pathology) Department, PGIMS, Rohtak subject to the condition that he shall deposit the amount of Rs.7,00,000/- as per the bond executed otherwise he shall serve in the HCMS cadre till 14.05.2013”.

Even otherwise, even a decision wrongly granted would not enable the petitioners to seek the benefit of Article 14 of the Constitution of India. It is settled principle that it is not a negative proposition as such. The State was also well justified in placing reliance upon the judgments of the Apex Court to contend that Article 14 of the Constitution of India could not be enforced by way of negative equality by compounding one thing and permitting and enforcing something illegal. The discretionary power of the High Court under Article 226 of the Constitution of India could not be exercised for such purpose as laid down in ***Gursharan Singh vs. New Delhi Municipal Committee, 1996 (2) SCC 459*** and ***Secretary, Jaipur Development Authority, Jaipur vs. Daulat Mal Jain and others, 1997 (1) SCC 35***. The relevant portion in *Daulat Mal Jain's case (supra)* reads thus:-

“24.....The apart, Article 14 has no application or justification to legitimise an illegal and illegitimate action. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar fight and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to. deny the same benefit. The rational relationship and legal back up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some person derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead nor court can countenance that benefit had from infraction of law and must be allowed to be retained.

Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously no.

25. *In Yadu Nandan Garg's case (supra), it was contended that one of the person whose land was acquired, had the benefit of exemption from the acquisition; writ petition was filed seeking similar benefit. When it was contended that it was violative of Article 14, this court in paragraph 5 had held that "a wrong exemption under wrong action taken by the authorities will not clothe others to get the same benefit nor can Article 14 be pressed into service on the ground of invidious discrimination."*

26. *In Coromandel Fertilizers Ltd. v. Union of India and Ors., [1984] Supp SCC 457, it was held in paragraph 13, that wrong decision in favour of any party does not entitle any other party to claim the benefit on the basis of the wrong decision. In that case, one of the items was excluded from the schedule, by wrong decision, from its purview. It was contended that authorities could not deny benefit to the appellant, since he stood on the same footing with excluded company. Article 14, therefore, was pressed into service. This Court had held that even if the grievance of the appellant was well founded, it did not entitle the appellant to claim the benefit of the notification. A wrong decision in favour of any particular party does not entitle another party to claim the benefit on the basis of the wrong decision. Therefore, the claim for exemption on the anvil of Article 14 was rejected.*

27. *In Chandigarh Administration & Another v, Jagjit Singh & Another, [1995] 1 SCC 745, allotment of the sites was subject matter under several proceedings in the High Court; ultimately some persons had the benefit of allotment while others were denied of the*

same. When Article 14 was pressed into service, this Court in paragraph 8 at page 750 had held, that the basis of the principle, if it can be called one, on which the writ petition had been allowed to be taken, was unsustainable in law and indefensible in principle. The mere fact that the respondent-authority had passed a particular order in the case of another person similarly situated, can never be the ground for issuing a writ in favour of petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order could not be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality to cause another unwarranted order. The extraordinary and discretionary power of the High Court under Article 226 cannot be exercised for such a purpose.

28. A host of other decisions in that context have laid the same principle. It is not necessary to burden the judgment any further. Suffice to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents.”

Even otherwise, the similarly situated person Dr. Deepak Jain is

bound by the same terms and conditions as per the orders passed by this

Court in view of letter dated 19.08.2015 and, therefore, the issue of parity would also apply to him.

The letter dated 06.01.2012 (Annexure P-17), upon which counsel for the petitioner has placed strong reliance, also would not take the petitioner a long way since it is on the issue of sending Doctors of Health Departments to medical colleges on deputation. It would rather substantiate the stand of the state that the examples given are of deputation with the government medical colleges as Annexures P-18 to P-20. It is settled principle that deputation is a tripartite agreement and, therefore, it is in such circumstances, the State has justified the instructions dated 06.01.2012 whereby, on account of setting up of new medical colleges, experts were required and to be deputed for the purposes of complying with the requirement of the Medical Council of India.

Accordingly, keeping in view the above, this Court is of the opinion that no fault can be found in the impugned orders and the present writ petitions are accordingly dismissed.

It is, however, pertinent to notice that due to interim orders, the petitioners had been relieved subject to the decision of the writ petition. In certain cases, senior counsel has pointed out that the bond period has now run out. It is, thus, clarified that it will be open to the State to take appropriate action to enforce the bond by adopting procedure in accordance with law.

09.11.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No