

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 22831 of 2017 (O&M)

Date of decision: 08.11.2017

Dr. Abhijit Ramdas Rozatkar

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

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

Present: Mr. Adarsh Jain, Advocate, for the petitioner.

Ms. Shruti Goyal, AAG, Haryana.

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks quashing of letter dated 28.09.2017 (Annexure P-10) whereby the State has declined to issue No Objection Certificate (in short 'NOC') to the petitioner. The ground taken is that the same cannot be issued in larger public interest in view of acute shortage of staff/teaching faculty with respondent No. 3- Shaheed Hasan Khan Mewati Government Medical College, Nalhar, Nuh as it would hamper patient care and teaching of MBBS students studying there.

It is relevant to notice that vide the same order, one Dr. Anil Kumar Goyal, Department of Pediatrics of the same institute has also been denied the NOC. He had approached this Court in CWP No. 22854 of 2017 which was disposed of on 25.10.2017 after noticing that the resignation has been accepted subject to pending dues. Resultantly, on account of his appointment as Additional Professor Pediatrics AIIMS,

Raipur (Chhatisgarh), the requirement of NOC was no longer required and accordingly directions were issued to issue necessary experience certificate as per clause 7 II (b) of the appointment letter.

The present writ petition is accordingly liable to be allowed on the sole ground of violation of Article 14 of the Constitution of India since nothing has been shown as to how in one case the resignation of one employee has been accepted but in the case of other it has been denied without any basis, thereafter. The petitioner who was appointed on 22.01.2013 (initially) as Assistant Professor, had applied in pursuance of advertisement dated 02.03.2016 (Annexure P-5) with the All India Institute of Medical Science (AIIMS) Bhopal. As per the terms of advertisement, he applied for NOC from respondent No. 3 which had been duly forwarded on 28.04.2016 (Annexure P-3) to respondent No. 2. In the meantime, the petitioner was appointed as Associate Professor, Psychiatry Department on probation for a period of two years on 16/18-1-17 (Annexure P-1) by respondent No. 1 and posted with respondent No. 3. As per clause 10, the petitioner could not apply for any post in Government/Public Sector Undertaking/Private Sector during the first five years after joining the service in the College and no NOC was to be issued for this purpose. A bond was to be executed to the extent of Rs.25 lacs in favour of the State Government Undertaking for an amount of Rs.5 lacs every year. It is not disputed that as per letter dated 23.02.2017 (Annexure P-2), the condition of serving five years or executing a bond of Rs.25 lacs in lieu thereof in the appointment letters issued from time to time for various teaching posts in all government medical colleges including respondent No. 3 was done away with.

The petitioner in pursuance of the advertisement and his application has been appointed on 25.07.2017 at AIIMS Bhopal (Annexure P-6). As per clause 7 (ii) (b) and (e), the requisite experience certificate as per the terms of advertisement and discharge relieving certificate from the previous employer are a condition precedent for joining his duty by 24.08.2017. The joining period had been extended upto 24.11.2017 vide letter dated 19.08.2017(Annexure P-7). Accordingly, in view of the appointment letter, the petitioner gave one month notice and resigned on 14.09.2017 (Annexure P-8) which was to come into effect from 13.10.2017 and resultantly he had approached this Court for issuing of relieving order in pursuance to the resignation letter.

The State in its defence has taken a plea that in larger public interest in view of acute shortage of staff/teaching faculty with respondent No. 3 as it would hamper patient care and teaching of MBBS students studying there and as per terms and conditions of the appointment letter, the NOC has been declined. Reliance has also been made on the fact that the petitioner was on probation.

Counsel for the State has accordingly relied upon judgment of the Coordinate Bench passed in **CWP No. 14062 of 2016** titled as ***Manjeet Singh and others V/s. State of Haryana and others***, decided on 22.02.2017, to submit that the request for NOC was declined in a case of Probationer on account of the fact that no NOC could be given till the completion of the probation period which was a part of the appointment letter. As noticed in the present case, a similar clause is there in the petitioner's appointment order which was part of clause 10. Clause 10 reads as under:-

“10. You shall not be allowed to apply for any post in Government/Public Sector Undertaking/Private Sector during the first five years after joining the service in the College and No Objection Certificate shall not be issued to you for this purpose. You shall have to execute a bond of Rs.25.00 lakhs (Rupees Twenty five lakhs only) in favour of the State Government undertaking that you shall serve the College for a minimum period of five years. In case you fail to serve the College as per bond so executed, then you shall have to pay to the Government an amount of Rs.5,00,000/- (Rs. Five lakhs) for every year or part thereof by which the service falls short of five years. The proforma of bond to be executed is enclosed.”

The said clause however, itself was withdrawn to the extent the part of 5 years serving or executing the bond was taken away by the State itself vide communication dated 23.02.2017 (Annexure P-2) which would be clear from the contents of the said letter reproduced below:

“After consideration, the government has decided to withdraw the condition of serving five years or executing a bond of Rs. 25 Lacs in lieu thereof in the appointment letters issued by the government from time to time for various teaching posts in all government medical colleges, namely, Post Graduate Institute of Medical Sciences, Rohtak, Bhagat Phool Singh Government Medical College for Women, Khanpur Kalan, Sonapat, Kalpana Chawla Government Medical College Karnal, and Shaheed Hassan Khan Government Medical College Nalhar Nuh, with immediate effect. You are therefore requested to intimate all concerned accordingly.”

Thus, the judgment relied upon by the State would not be applicable to the facts and circumstances as the State itself has chosen to withdraw condition of minimum 5 years of service after the date of the judgment.

The issue of discrimination has already been noticed that vide

impugned order dated 28.09.2017 (Annexure P-10) two persons were denied the NOC but in one case the same has been granted. No discernible reason has been mentioned in the written statement as to why such discrimination has been done by the State and why the petitioner's resignation has not been accepted whereas the resignation of Dr. Anil Kumar Goyal has been accepted and on this ground also, writ petition is liable to be allowed.

Lastly, counsel is justified in placing reliance upon judgment passed in ***CWP No. 7411 of 2017*** titled as ***Dr. Rahul Chawla and another V/s. State of Haryana and others***, decided on 21.09.2017, wherein also the State could not show any legal bar by which the petitioner was bound to serve them for times to come. The petitioner was wanting to appear for interview to the post of Associate Professor with Kalpana Chawla Government Medical College, Karnal being employee's with Government Medical College for Women, Khanpur Kalan, District Sonapat in that case. Reliance had accordingly been placed upon the judgment passed in ***CWP No. 19712 of 2016*** titled as ***Shiv Charan and others V/s. State of Haryana and others***, decided on 10.11.2016 that bondage to the staff as such cannot be accepted.

Reliance can also be placed upon the judgment of Hon'ble the Apex Court in ***Central Inland Water Transport Corporation Ltd. and another V/s. Brojo Nath Ganguly and another*** 1986 (3) SCC 156 wherein the unequal bargaining power of the Corporation to levy unreasonable condition was found arbitrary by the Apex Court. The said clause was set aside which pertained to the fact that there was right of termination of a permanent employee by giving him three months' notice in writing or by

paying him the equivalent of three months basic pay and dearness allowance in lieu of such notice. Similarly, the situation herein is that petitioner is merely a Probationer and wishes to leave and has resigned but the State wants him to hang on to his service with the reason given in the impugned order by falling back on the issue of public interest. The said public interest has been diluted by accepting the resignation of a similarly placed employee.

In such circumstances, this Court is of the opinion that writ petition is liable to be allowed. Accordingly, the order dated 28.09.2017 (Annexure P-10) is quashed and the State shall issue necessary experience certificate and discharge certificate as required within one week from the receipt of certified copy of this order.

Writ petition is accordingly allowed.

08.11.2017

Divyanshi

**(G.S. SANDHAWALIA)
JUDGE**

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No