

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

CWP No.4825 of 2014

Date of Decision:07.11.2017

Dr. Tammanna Shree

... Petitioner

Vs.

Union of India and others

... Respondents

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

Present : Mr. Shiv Darshan Dutta, Advocate for the petitioner.

Mr. Brijeshwar S. Jaswal, Advocate for the respondents.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has challenged the validity of order dated 21.03.2012 (Annexure P-7) by which concerned respondent has resorted for recovery of sum of Rs.1,22,481/- in terms of the order of appointment issued to the petitioner.

Petitioner was appointed as a Medical Officer on 28.05.2010. Before completion of 10 years of service, due to domestic reason, petitioner submitted her resignation on 18.7.2011. It was accepted on 13.10.2011. Thereafter, respondents resorted for recovery on 23.7.2011 in terms of the order of appointment which is under challenge in the present case.

Learned counsel for the petitioner submitted that question of recovery of three months' pay and allowances for resignation from service prior to completion of 10 years of service would arise only as and when employee/petitioner was sent for training. Petitioner was appointed as a Medical Officer. Question of sending her for training do not arise. Therefore, invoking relevant provisions of BSF Rules in the case of the petitioner is not attracted and the same is distinguishable. The relevant

procedure which has been invoked for the purpose of passing order dated 23.07.2011 is applicable to such of those persons who were appointed to a post and who have been sent for training. Consequently, impugned action with regard to rejection of petitioner's representation vide order dated 21.03.2012 is liable to be set aside and petitioner be entitled for release of Rs.24226/- on account of HRA, leave encashment and arrears of pay also.

Per contra, learned counsel for the respondents submitted that even though petitioner was appointed as a Medical Officer, however, for the purpose of discharging the duties in the border area certain basic training has been imparted to the petitioner. Therefore, contention of the petitioner that she has not undergone training is not tenable. It was further submitted that as per order of appointment issued on 4.5.2010, terms and conditions have been imposed on the petitioner's offer of appointment for the post of Medical Officer (Assistant Commandant in BSF). Condition No.2 (d) stipulates thus:

“if you tender resignation from service within a period of 10 years for reasons other than accepting a job under Central or State Governments or Local Bodies for which cadre clearance has been granted, your resignation may be accepted only after you refund to the Government training cost or three months pay and allowances last drawn by you or if you have not completed three months service on the basis of pay and allowances to which you are entitled in the month in which you tender your resignation whichever is higher.”

In terms of the above condition and the fact that petitioner has accepted the terms and conditions stipulated in the order of appointment, now she cannot turn around and say that such condition is not applicable to the petitioner as she was appointed as a Medical Officer without there being

any training. Accordingly, petitioner's claim is liable to be rejected.

Heard learned counsel for the parties.

Crux of the matter in the present petition is whether petitioner is entitled for waiver of Clause 2(d) of the order of appointment or not?

Para 2(d) order of appointment is crystal clear that under two circumstances, one has to refund the amount. In other words, two classes of persons like petitioner who has not undergone any training, in that event also three months salary is recoverable and so also persons who have undergone training they are also liable to pay three months pay and allowances, if they resigned, prior to 10 years of service. Petitioner has not questioned the validity of terms and conditions imposed in the order of appointment. Once the terms and conditions are accepted by the petitioner way back in the year 2010 and discharged the duties of the post for about 18 months. Thereafter, she cannot say that it is arbitrary and illegal. Moreover, there is no challenge to such terms and conditions.

In view of the above facts and circumstances, petitioner has not made out a case so as to interfere with Annexure P-5.

Accordingly, petition stands dismissed.

07.11.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No