

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

**Civil Writ Petition No.7411 of 2017 and
connected petition
Decided on : 21.09.2017**

Dr. Rahul Chawla and another

... Petitioners

Versus

State of Haryana and others

... Respondents

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

Present : Mr. Ram Niwas Sharma, Advocate for the petitioners
in CWP No.7411 of 2017.

Mr. Sushil Jain, Advocate for the petitioners
in CWP No.10547 of 2017.

Mr. D.S. Nalwa, Addl. AG, Haryana.

Mr. Teevar Sharma, Advocate
for respondent-University.

G.S. Sandhawalia, J. (Oral)

The present order shall dispose of two writ petitions i.e. **CWP Nos.7411 and 10547 of 2017** as common question of law and fact are involved. The facts are being taken from **CWP No.7411 of 2017 'Dr. Rahul Chawla and another Vs. State of Haryana and others'**.

At the outset, Mr. Ram Niwas Sharma, counsel for the petitioners submits that in view of the result being declared, the writ petition has been rendered infructuous qua petitioner No.1, since he has not been selected in CWP No.7411 of 2017.

Similarly, Mr. Sushil Jain counsel for the petitioners submits that the writ petition has been rendered infructuous qua petitioner No.2,

since he has not been selected in CWP No.10547 of 2017.

Accordingly, the present writ petition are dismissed qua the abovesaid persons.

The petitioner No.2 claims directions for issuance of No Objection Certificate and Experience Certificate and for appearing in the interview for the post of Professor/Associate Professor with respondent No.4-Kalpna Chawla Government Medical College, Karnal.

The petitioner is already employed and working with respondent No.3-BPS Government Medical College for Women, Khanpur Kalan, District Sonapat as Associate Professor. The appointment letter dated 15.05.2013 (Annexure P-1 colly.) issued by respondent No.1 is already on record. As per the terms of the appointment, there is no such condition, whereby any bond has been executed with the State to serve at a particular place for a particular period or that the Rules provide that experience certificate is not to be issued.

The petitioner's grouse is that as per advertisement (Annexure P-2), the college at Karnal had advertised posts for which the petitioner had applied and is eligible as per the terms and conditions having the necessary experience.

As noticed above, he has also been selected in view of the interim orders passed by this Court. He had accordingly applied for the No Objection Certificate on 30.01.2017 (Annexure P-3) while being in service, thus, requiring the experience certificate before the last date i.e. 20.02.2017. On account of not having been given the necessary

certificates, jurisdiction of this Court was invoked under Article 226 of Constitution of the India.

In the reply filed by the respondents, the only defence is taken that there is requirement to fulfill the MCI Guidelines and there is a shortage of staff at Sonapat and if the petitioner leaves the patient care will be affected and, therefore, the No Objection Certificate cannot be given.

The State could not show any legal bar as such or any conditions by which the petitioners were bound to serve them for all times to come at a particular place. The advertisement is also of a Government College by respondent No.2-DGMER who is under respondent No.1 and, therefore, petitioner has only applied and sought No Objection Certificate, on account of the fact that the experience certificate was part of the requirement for their selection for the purpose of the necessary eligibility.

The denial as such of the petitioner's request is, thus, without any basis and not as per any statutory provision or policy rules and even nothing has been shown that on what basis the State can hold back an experience certificate which the petitioner has gained over the last three years of service.

Reliance has been placed upon by the counsel for the petitioner on similar orders passed in **CWP No.19712 of 2016 'Shiv Charan and others Vs. State of Haryana and others'** decided on 10.11.2016 (Annexure P-7), whereby the employees were wanting to shift

from Mewat to join at Karnal. It was, accordingly, held that there can be no bondage to the staff as such and the Government can always take steps to man the services in Mewat by all its available means and it is their problem to solve the issue of shortage of manpower. The relevant portion reads as under:-

“Accordingly, in the special circumstances of the case the question arises as to how to strike a balance between public interest and private interest. Ordinarily, the Courts have accepted the principle that private interest must yield to public interest and the search is where the larger public interest lies. But at the same time the petitioners have a valuable right of consideration for appointment by transfer which is fundamental in nature within the obligations placed on the State by Article 16 of the Constitution, where every citizen must be granted equal opportunity in public employment. Public employment would not necessarily mean direct recruitment for the first time entry into service but also for in-service Government employees, who also have an equal right to apply and be considered on merit against public advertisements issued by various departments calling for applications from eligible candidates to fill vacancies in their institutions. As against fundamental rights protection of equal opportunity of participation, I think upholding the right to compete far would outweigh the doctrine of public interest which must give in to private interest in a service matter. Right to career advancement and the freedom to do without let bears characteristics of fundamental rights in the equal opportunity law. It is for the Court in an action brought before it to understand how best to weigh competing interests, one against the other while applying this principle. I think the argument of Mr. Pandit should not be

accepted to deny permission to be leave parent department as it would negate the foundation stones of Articles 14 and 16 of our Constitution, which is the fundamental law when read together in service law. After all, the Kalpna Chawla Government Medical College, Karnal is also a government run institution, so what is the brouhaha about in opposing the petition.

Merely because the Government services have propensity of being paralyzed by such migratory appointments, either direct or by transfer, would be no valid ground to deny relief by permissions from parent department to leave Mewat and join at Karnal. The State has ample wherewithal at its command at short notice to take steps to man services in Mewat by all its available means and it is their problem to solve.

Therefore, the Court should not stand in the way of the petitioners to deny them right of appointment in the new organization especially when many of them have been selected on merit and some have their names figuring in the waiting list. Denial of right at this stage would amount to slavery and frustration of right of choice. The petitioners are not in bondage at Mewat. No fetters can be placed on their rights to tie the petitioners down permanently to their present place of work at Mewat as Laboratory Technician, Staff Nurses etc. of course with the exception of routine posting and transfers within the department concerned. That situation does not arise for the present.

Consequently, I have no doubt in mind after hearing counsel and perusing the result of selection that the petitioners have a case on merits and their petition deserves to be allowed. It is ordered accordingly.”

Counsel for the State has placed reliance upon the judgment

passed in '**Dhirendra Chhetri Vs. Union of India and others'** 2013 (4)

SCT 248 to submit that in similar circumstances, NOC was declined and, therefore, the State has the power as such to hold the experience certificate.

A perusal of the said judgment would go on to show that there was a policy in question dated 21.05.2010 and in such circumstances an order was passed by the competent authority to deny the NOC. Nothing has been brought to the notice of this Court that any such policy exists and in the absence of the same, the State cannot as such deny the experience certificate which the petitioner gained while working.

Accordingly, the present petitions are allowed. The NOC and experience certificate be issued to the petitioners within a period of one week from today.

SEPTEMBER 21, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No