

CWP No.7667 of 2017

[1]

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

**CWP No.7667 of 2017
Date of decision:05.05.2017**

Dr. Vikas Malik

...Petitioner

Versus

State of Haryana and others

..Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Karanvir Singh Khehar, Advocate,
for the petitioner.

Ms. Tanisha Peshawaria, DAG, Haryana.

Rakesh Kumar Jain, J. (Oral)

The petitioner has challenged the order dated 07.04.2017 by which he has not been given No Objection Certificate (NOC) to pursue the Postgraduate Course against reserved HCMS quota at PGIMS, Rohtak.

In brief, the petitioner has alleged that he has worked as a Demonstrator on contract basis in Anatomy Department of the PGIMS, Rohtak from 28.06.2005 to 26.02.2009. Thereafter, he worked as a Medical Officer in Haryana Civil Medical Services from 20.03.2009 to 06.10.2010 while posted in Primary Health Centre, Village Shamlo Kalan, District Jind. The petitioner was allegedly issued letter dated 24.03.2010 by the Director General, Health Services, Haryana for his recruitment in HCMS Class-III on regular basis. Thereafter, the petitioner was selected by the Labour Department for ESI Health Centres, upon which the Director General, Health Services, Haryana requested the Financial Commissioner and

Principal Secretary to the Government, Department of Health, Haryana, for his relieving. He was relieved vide letter dated 13.08.2010 from the Health Department, Haryana, subject to the condition that his lien will not be retained in the HCMS cadre. He, thus, became an employee of the Labour Department posted in the ESI Dispensary at Faridabad. It is averred that as per the policy framed by the Government of Haryana, the HCMS cadre doctors are eligible for sponsorship for pursuing postgraduate course against reserved HCMS quota at PGIMS, Rohtak and other government institution, only after completion of four years of regular satisfactory service, out of which two years service should be rural service. The Health Department, Haryana, vide letter dated 23.12.2011, issued a revised policy regarding higher studies for HCMS doctors, in which it is provided that the persons desirous of undertaking the higher studies will have to obtain an NOC from the State Government before submitting their applications to the institutions concerned for admission in the postgraduate course(s). It is further averred that the higher studies policy for HCMS doctors was amended vide letter dated 04.03.2014 for issuing NOC for PG Degree/Diploma Course for in-service HCMS doctors, in which it was provided that *“candidates already in service must submit their application form through their employer or produce “No Objection Certificate” from the employer on or before the last date of receipt of application form.”*

The petitioner allegedly approached the appropriate authority vide letter dated 17.02.2016 to give him rural posting and vide order dated 28.04.2016, he was transferred from ESI Hospital, Sector-8, Faridabad to ESI Dispensary IMT, Faridabad.

The petitioner, being desirous of pursuing higher studies at the postgraduate level, requested for issuance of NOC on 14.10.2015, 22.03.2016 and 23.04.2016 but did not get the same even after the first counselling was over, which led to the filing of CWP No.9697 of 2016 by the petitioner, in which he was allowed to appear in the counselling vide order dated 17.05.2016. Thereafter, the said writ petition was disposed of vide order dated 03.06.2016. However, it was alleged that the interim order passed in the aforesaid case was not complied with, therefore, the petitioner had to file COCP No.2526 of 2016 but the same was withdrawn by him on 19.10.2016 as having become infructuous because in the meantime, the petitioner was transferred to the rural area.

It is further averred that the petitioner got NOC on 12.07.2016 and applied for NEET-PG-2017 on 27.09.2016 and appeared in the examination on 13.12.2016. He applied for NOC under the HCMS quota for admission to the postgraduate course for the academic session 2017 to 2020 on 11.02.2017. Since the NOC was not issued, he was compelled to file CWP No.6221 of 2017 for issuance of NOC by counting his service rendered in HCMS cadre from 02.03.2009 to 06.10.2010 and further service rendered as Medical Officer in ESI Healthcare, Haryana, from 07.10.2010. The said writ petition was disposed of on 07.04.2017 when the department produced a copy of the impugned order, rejecting the prayer made by the petitioner.

The said order dated 07.04.2017 has been challenged in this petition on the ground that the respondents have erred in declining the NOC to the petitioner on the ground that he did not keep his lien and had not

joined the Labour Department as a direct recruitee through proper channel. It is further submitted that the petitioner has not prayed in this petition for his lien or protection of pay but has prayed that the services rendered by him in the HCMS cadre may be counted towards the total length of service required for rural service.

On the other hand, learned State counsel has supported the impugned order alleging that the service of the petitioner rendered in the HCMS cadre cannot be clubbed with the service rendered by him in the ESI Healthcare because his recruitment in the ESI Healthcare (Labour Department) was not through proper channel.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that there is no error in the impugned order. For ready reference, the relevant part of the impugned order is reproduced as under:-

“As stated above, the petitioner joined the ESI Health Care Department on 07.10.2010 against direct recruit and did not apply through proper channel and his lien was also not retained by the Health Department, Haryana and, therefore, as per rule 10(i) of the Haryana Civil Services (Pay) Rules, 2016, the petitioner is not entitled to protection of pay. When the petitioner is not entitled to protection of pay, so he is not entitled to claim benefit of past service rendered by him in the Health Department, Haryana. Hence, the service i.e. rural service rendered by the petitioner in the Health Department cannot be counted towards the requisite two years rural service as required under the relevant Government instructions for being eligible for grant of NOC for pursuing Post Graduate Course against reserved HCMS quota at PGIMS, Rohtak.”

Since the petitioner did not apply through proper channel, as

observed in the impugned order, and no evidence has been led by the petitioner to the contrary, the petitioner has lost his past service rendered in the Health Department, Haryana, which cannot be counted towards the rural service rendered by him to make up his period of rural service of 2 years with the aid of service rendered by him in the ESI Health Care as a Medical Officer.

Thus, the argument raised by counsel for the petitioner that his experience in HCMS cadre has to be counted towards rural service is of no avail.

No other point has been raised.

In view of the above, I do not find any merit in the present petition and hence, the same is hereby dismissed.

May 05, 2016
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No