

CWP No.8452 of 2017 (O&M)

[1]

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

**CWP No.8452 of 2017 (O&M)
Date of decision:05.05.2017**

Dr. Nidhi Rathee

...Petitioner

Versus

State of Haryana and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ranjit Saini, Advocate,
for the petitioner.

Mr. B.R.Mahajan, Advocate General, Haryana, with
Mr. Lokesh Sinhal, Addl. A.G., Haryana.

Rakesh Kumar Jain, J. (Oral)

The petitioner has prayed for the issuance of a writ in the nature of *certiorari* for quashing the letters dated 20.04.2017 (Annexure P-5) and dated 21.04.2017, both issued by the Medical Education and Research Department, Haryana.

Precisely, the petitioner is aggrieved against condition no.1 contained in the letter dated 21.04.2017, which reads as under:-

“1. Minimum of three years rural service and total four years service is mandatory to avail incentive/weightage of marks as per Regulation 9 of Post Graduate Medical Education Regulation 2000 of MCI for in service candidates.”

In brief, the petitioner, after obtaining her MBBS degree in the year 2009, was selected as a Medical Officer in the year 2009 itself and was posted at CHC, Nuh, District Mewat on 29.08.2009 as Medical Officer, where

she worked upto 04.09.2010. On 04.12.2010, she was transferred to Government Hospital, Gurugram, where she worked as Medical Officer upto 23.08.2012. The petitioner also undergone the Emergency Obstetric Care training, for which she was also granted ACP. The petitioner further worked as a Medical Officer in Civil Dispensary, Gurugram upto 03.10.2015 and, thereafter, transferred to CHC, Pataudi, where she is still working.

The petitioner, in order to pursue her postgraduate studies, had to apply for NOC from her employer. It is submitted that as per instructions dated 04.03.2014, the petitioner was required to have two years rural service for the purpose of obtaining NOC. According to the petitioner, the impugned condition no.1 contained in the letter dated 21.04.2017 is a road-block for the petitioner to obtain NOC, therefore, the present petition has been filed. It is submitted that there is a complete misreading of the Regulations on the part of the respondents while laying down condition no.1 in the impugned letter. In this regard, he has referred to the proviso added to Clause 9(IV) of the Post-graduate Medical Education (Amendment) Regulation, 2012 (Part I) (hereinafter referred to as the “Regulations-2012”), which reads as under:-

“Provided that in determining the merit of candidates who are in-service of Government/Public Authority, weightage in the marks may be given by the Government/Competent Authority as an incentive at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas upto the maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test, the remote and difficult area shall be as defined by State Government/Competent authority from time to time.”

Counsel for the petitioner has submitted that as per the aforesaid proviso, the candidate who had served in the rural area would get 10% marks as incentive for each year of service rendered in the rural/remote/difficult areas,

which would be upto the maximum of 30% marks. It does not say at all that rendering of minimum 3 years services and total 4 years services in the rural/remote/difficult areas is mandatory to avail the aforesaid incentive. He has also submitted that the petitioner has already served for more than 2 years in rural areas. In this regard, he has counted the service rendered by her while posted at CHC, Nuh in district Mewat.

Learned Advocate General has rather submitted that the petitioner has not completed two years rural service as the services rendered by her at CHC, Nuh cannot be considered as having been served in the remote/difficult area. It is also submitted that the impugned condition has been laid strictly in terms of the proviso to Clause 9(IV) of the Regulations-2012 because it is provided therein that the maximum benefit, which can be given to an in-service doctor for his/her rural service, shall be 30% marks which means that he/she has to serve for 3 years in the rural area in order to avail the said benefit.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that the impugned condition no.1 contained in the letter dated 21.04.2017 is totally erroneous and based on misreading of the proviso to Clause 9(IV) of the Regulations-2012. The proviso only says that how much benefit would be given to a candidate who would serve in rural/remote/difficult area. It says that the incentive would be given at the rate of 10% for each year and it would be upto maximum of 30% *de hors* the length of service rendered by a candidate in the rural/remote/difficult areas. It has no relation with the eligibility for claiming that benefit which has been laid down by way of the impugned condition no.1.

Thus, in my considered opinion, the said condition is totally

unwarranted and uncalled for as it is based upon non-application of mind.

Consequently, the present writ petition is hereby allowed and condition no.1 contained in the impugned letter dated 21.04.2017 is hereby struck down being totally unreasonable, arbitrary and based upon misreading of the relevant provisions. The respondents are directed to consider case of the petitioner for grant of NOC on the basis of the fact as to whether the services rendered by her at CHC, Nuh shall also be considered to be rendered in the rural area or not? The needful shall be done forthwith as the counselling is in offing.

May 05, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No