

**CWP No. 10405 of 2017 and
CWP No. 26697 of 2016**

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 10405 of 2017

Date of decision : November 22, 2018

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Madan Lal

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CWP No. 26697 of 2016

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Sanjeev Kumar and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Rajesh K. Kataria, Advocate for the petitioner.

Mr. Ram Niwas Sharma, Advocate for the petitioners.
(in CWP No.26697 of 2016)

Mr. Gaurav Jindal, Addl. A.G., Haryana.

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RITU BAHRI, J.

By this common judgment, two writ petitions bearing CWP

No.10405 of 2017 (Madan Lal vs. State of Haryana and others) and CWP

No.26697 of 2016 (Sanjeev Kumar and others vs. State of Haryana and

others) will be decided as the similar question of law arises for consideration in both the petitions. For the sake of convenience, facts are being extracted from CWP No. 10405 of 2017.

The petitioner is seeking quashing of the order dated 30.12.2016 (Annexure P-8), whereby condition of resignation has been imposed by the Director, Pt. B.D Sharma University of Health Sciences, Rohtak upon the petitioner so that he can be relieved from the Institute.

The petitioner was appointed by Pt. B.D Sharma University of Health Sciences, Rohtak-respondent no.3 as Lab Technician on regular basis vide order dated 26.3.1993 on the recommendation of Selection Committee. Vide advertisement (Annexure P-1), the Director, Kalpana Chawla Govt. Medical College, Karnal-respondent no.5 had invited applications to fill up the posts of Lab Technicians by way of transfer from other Government Departments/State Universities of Haryana. Petitioner applied through proper channel after respondent no.4-Director, Pt. B.D Sharma University of Health Sciences, Rohtak, issued NOC vide letter dated 27.9.2016 (Annexure P-2). One of the conditions of NOC was that in case of selection and joining to the post applied for, they will have to resign from the present post held by them in this Institute and no lien will be kept in this Institute. The petitioner appeared for interview and pursuant to the recommendation made by the Selection Committee, Director, Kalpana Chawla Govt. Medical College, Karnal issued appointment letter dated 23.11.2016 (Annexure P-3). As per the appointment letter dated 23.11.2016 (Annexure P-3), petitioner was directed to join immediately but not later

than 15 days from the date of receipt of the appointment letter after proper relieving from the department of the petitioner. Petitioner made an application to respondent no.3 to relieve them so that they can join their fresh appointment before 5.12.2016 but respondent no.4 vide letter dated 8.12.2016 (Annexure P-4) asked the petitioner to submit one month notice as per terms and conditions of the appointment letter so that he may be relieved. Respondent no.4 instead of relieving the petitioner, passed another order dated 30.12.2016 (Annexure P-8), whereby condition of resignation was imposed on petitioner for relieving from the post. Respondent no.5 cancelled the appointment letter of the petitioner vide order dated 27.4.2017 (Annexure P-11). Petitioner submitted objection letter vide letter dated 04.05.2017 (Annexure P-12) to respondent no.5. In the letter it was mentioned that issue with regard to non relieving from the parental institution is pending adjudication before High Court under CWP No.26697 of 2016.

Counsel for the petitioner has argued that in the case of Shiv Charan and others vs. State of Haryana and others (CWP No.19712 of 2016) decided on 10.11.2016, in the matter of selection for the posts of Staff Nurse and Laboratory Technicians, this Court was considering whether the State Government should relieve the selected candidates from the Institute at Mewat to join Kalpana Chawla Government Medical College Karnal which is also a Government run Institute. The anguish of the State was that heavy migration of staff nurses and other employees from the Institute at Mewat to Kalpana Chawla Government Medical College, Karnal may lead

to paralyzing essential services in Mewat since it would not be possible to make direct recruitment to fill the post which will be vacated by the successful petitioners on their appointment by transfer in the Kalpana Chawla Government Medical College, Karnal. The Court allowed the writ petition and observed that 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. The petitioners in that case were working in Mewat and it was observed by the Court that if they are not given permission to leave parent Department 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.

In the present case, the ratio of the judgment passed by this Court in **Shiv Charan's case (supra)** is directly applicable to the facts of the present case. Vide letter dated 27.9.2016 (Annexure P-2), Respondent no.4-Director, Pt. B.D Sharma University of Health Sciences, Rohtak gave the NOC to the petitioner to participate in the selection process initiated vide advertisement (Annexure P-1). After participating in the selection process, the petitioner was duly selected. The petitioner had to be relieved from the parent department. In such case, no such condition could be imposed that he should submit one month notice/resignation for being relieved. This condition is against ratio of the judgment passed by this Court in **Shiv Charan's case (supra)**. In view of this judgment, this writ petition is allowed. Impugned letter dated 30.12.2016 (Annexure P-8) is being set

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aside and a direction is being given to respondent no.4 to relieve the petitioners so that they can join as the respective selected candidate in the institute of Kalpana Chawla Govt. Medical College, Karnal. Ordered accordingly

November 22, 2018
ritu (**RITU BAHRI**)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No