

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3662 of 2015 (O&M)

Date of Decision: 13.11.2018

Sunil Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.S. Dhull, Advocate,
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

Mr. Dinesh Arora, Advocate,
for respondent No.4.

RAJIV NARAIN RAINA, J.

1. When this matter came up for hearing on August 31, 2018 the following order was passed:-

“State counsel would call upon department to file an additional affidavit disclosing whether respondent No.3 – Dr. Saransh Ahlawat is performing his duties and receiving salary on the post of Medical Officer since his selection.

List again on 11.09.2018.”

2. In compliance of the directions, State counsel took time on September 11, 2018 then again on October 01, 2018 and has today filed affidavit of Gauri Midha, Joint Director (Administration), office of Director General Health Services, Haryana, Panchkula on behalf of respondents No.1 and 2. Additional affidavit dated November 13, 2018 is taken on record.

3. It is disturbing to note the contents of para.3 of the affidavit which tell a sorry story of how selections are made at the level of Medical

Officers who are selected by a midway change of category from General to Special Backward Class quota comprising persons belonging to Bishnois, Jat, Jat Sikh, Ror and Tyagi vide Notification dated 24.01.2013 by accepting SBC certificates from the private respondents and that too after the last date of receiving applications for the post. The rules of the game were changed when the game had begun to be played. Contents of para.3 of the affidavit are reproduced below:-

“3. That it is respectfully submitted that Dr. Saransh Ahlawat (respondent No.3) was appointed as Medical Officer in Health Department Haryana vide appointment letter No.25/222/2014-6HB-I dated 14.08.2014 and he was posted at General Hospital Palwal. Dr. Saransh Ahlawat joined on 28.08.2014 (A.N.) at General Hospital Palwal. Dr. Saransh Ahlawat submitted the application for grant of study leave for three years for pursuing MD (Radio-diagnosis) in the office of Senior Medical Officer, Civil Hospital, Palwal, who forwarded the same to Civil Surgeon, Palwal. Civil Surgeon office Palwal vide letter No.Estt-I-2015/543 dated 12.06.2015 returned the application of respondent No.3 in original with the comments that Dr. Saransh Ahlawat was not entitled for study leave as he had not completed minimum three years service in view of Chief Secretary Haryana instructions No.3251-4GS-II/76/12309 dated 13.05.1976. Senior Medical Officer, Civil Hospital, Palwal vide letter No.C.H. Pal-2015/1059-60 dated 16.06.2015 informed Dr. Saransh Ahlawat that he could not be granted study leave and further directed to join duty after obtaining the permission from higher authorities otherwise he will be presumed willful absent from duty. Dr. Saransh Ahlawat has not contacted with the Department and he has been

remaining willful absence from duty since 28.05.2015.

Senior Medical Officer, Civil Hospital, Palwal vide letter No.CH-Pal-2018/2843 dated 29.10.2018 has informed that Dr. Saransh Ahlawat has been paid salary upto 30.04.2015.”

4. The extent of accommodation and favour shown to Dr. Saransh Ahlawat- respondent No.3 to offer appointment to him on August 14, 2014, allow him to join service on August 28, 2014 and soon thereafter to contend with his application for grant of study leave for three years to pursue MD in Radio Diagnosis. The request for study leave was rightly declined in view of Chief Secretary, Haryana instructions dated May 13, 1976 that it cannot be granted before completion of minimum of three years service. After receiving this bad news Dr Saransh Ahlawat has not contacted the department and remains willfully absent from duty since May 28, 2015. Dr. Ahlawat has blocked a public post at the level of medical doctor frustrating the very purpose of appointments and still no action has been taken against him for his unauthorized absence as nothing has been spelled out in the affidavit in this regard. This has seriously impaired the chances of the petitioner for appointment who was at number one in the waiting list applying under SBC category. The affidavit confirms suspicion that respondent No 3 Dr. Saransh Ahlawat has abandoned his job. If the State Government has not taken any steps to foreclose his appointment then this Court must step in to declare that he has willfully and voluntarily abandoned his job for a considerably long period of time for which neither notice nor inquiry is required as though it were a case of misconduct in view of the dictum of the Supreme Court in Vijay S. Sathaye v. Indian Airlines Ltd. and others, (2013) 10 SCC 253; observing as follows:-

“9...Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer”...

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“13. In Syndicate Bank v. General Secretary, Syndicate Bank Staff Association & Anr., AIR 2000 SC 2198; and Aligarh Muslim University & Ors. v. Mansoor Ali Khan, AIR 2000 SC 2783, this Court ruled that if a person is absent beyond the prescribed period for which leave of any kind can be granted, he should be treated to have resigned and ceases to be in service. In such a case, there is no need to hold an enquiry or to give any notice as it would amount to useless formalities”

5. Dr. Ahlawat is pretty much a party respondent in this petition with notice of challenge to his appointment and has knowledge of the proceedings with summons duly served on him as per office report but has not entered appearance personally or through counsel nor has tendered his reply to contest the petition. He is proceeded against ex parte. The Chief Secretary, Haryana is requested to advise the appointing authority of Dr. Saransh Ahlawat to strike his name off the rolls of Government service. But for the interim order dated August 31, 2018 the entire matter may have remained hushed up in the status quo.

6. The decision of the Selection Committee in a turnaround departure from the advertised terms and conditions acted unfairly in changing the category of post from the General to the Special Backward Class on production and acceptance of SBC certificate of respondent No 3 dated 17.07.2014 a month after the closing date fixed in the corrigendum (Annexure P-2) i.e.16.06.2014. Once the last date of submission of application forms has passed; no candidate can be permitted to take benefit

of any other category. The decision is, therefore, held to be clearly illegal, arbitrary and unconstitutional and accordingly the appointment of Dr. Saransh Ahlawat deserves to be invalidated.

7. The writ petition is allowed. Appointment of respondent No.3 is quashed. The case of the petitioner will now be considered as per merit from the waiting list expeditiously and in accordance with law.

(RAJIV NARAIN RAINA)
JUDGE

13.11.2018
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No