

Review Application No. 203 of 2019 in
CM No. 5246 of 2019 in
CWP No. 4315 of 2019(O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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**Review Application No. 203 of 2019 in
CM No. 5246 of 2019 in
CWP No. 4315 of 2019 (O&M)**

Date of decision : May 03, 2019

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Dr. Sudhir

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Abhishek Sethi, Advocate for the petitioner.

Ms. Palika Monga, DAG, Haryana.

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RITU BAHRI, J.

The petitioner is seeking writ of certiorari for quashing the order dated 9.1.2019 (Annexure P-9), whereby the representation/legal notice dated 18.8.2018 (Annexure P-7) of the petitioner for grant of a No Objection certificate for pursuing a Post Graduate Medical Science Course as an in-service candidate with full pay with continuity of service has been rejected.

Counsel for the petitioner refers to the policy dated 19.3.2018 (Annexure P-4). As per the above said policy, In-service HCMS/HCDS doctors may appear in any entrance/NEET examination for higher studies. No permission from the State Government will be required for appearing in the post graduation entrance examination. One of the conditions in the said policy is that any in-service HCMS/HCDS doctor who has completed 2 years of regular satisfactory service will be eligible for grant of NOC for pursuing PG Diploma/Degree/DNB courses without pay. However, if granted NOC, this period of study will be treated as extraordinary leave without pay. The service will be protected for the purpose of increments, seniority and pension, if entitled. Such persons will also be entitled to stipend if available in the institution and the third condition is as under:

(3) Any in-service HCMS/HCDS doctor wishes to do PG Degree/Diploma/DNB courses after completion of 4 years of regular satisfactory service with at least 2 years rural service/at least 2 years of remote and difficult areas service in Health Institutions of Haryana. Such doctor will be eligible for NOC with full pay as he/she was drawing and the period spent on the prescribed duration of course will be treated as service period for all intents and purposes. The doctor shall claim pay and HRA from the station from where he/she was relieved in case of his/her eligibility for full pay,

provided that the release of pay and other remuneration will be subject to deposition of stipend received/due on account of PG courses in State Treasury. The candidates will be required to give a certificate/affidavit in this regard duly attested/verified by head of Institution to the office of Director General Health Services, Haryana.

The petitioner joined the Government Services as Medical Officer with the ESI Healthcare wing of the Labour Department on 09-09-2014 on regular basis with the Haryana Public Service Commission vide appointment letter dated 30.8.2014 (Annexure P-1). Consequent upon his appointment, the petitioner was posted at ESI Dispensary, Daultabad. However, ESI Dispensary, Daultabad was not having its own building and the same was functioning at ESI Dispensary No.1, Gurugram. The petitioner has completed 4 years of regular satisfactory service and is seeking benefit of condition no.3 of the policy dated 19.3.2018 (Annexure P-4) as reproduced above for grant of NOC with full pay as he has done two years rural service at ESI Dispensary at Village Daultabad. Petitioner has remained posted at ESI Dispensary, Daultabad from 09-09-2014 till 11-10-2017 (3 years 1 month and 3 days) which falls in a rural area. On 12.10.2017, the petitioner was transferred from ESI Dispensary, Daultabad to ESI Dispensary, Rai in District Sonipat. The petitioner appeared in the NEET PG Exam for entrance to a Post Graduate Course in Medical Sciences. As was contemplated in the above said policy dated 19.3.2018

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(Annexure P-4), the petitioner applied for a No Objection Certificate to the competent authority before the second counseling for the last academic Session. The application of the petitioner for grant of a No Objection Certificate for pursuing a Post Graduate Medical Science Course as an in-service candidate was rejected vide letter dated 24.4.2018 (Annexure P-6). Aggrieved by the rejection for grant of a No Objection Certificate for pursuing a post Graduate Medical Science Course as an in-service candidate, the petitioner preferred CWP No.24123 of 2018 before this Court. The said writ petition was disposed of vide order dated 20.9.2018 (Annexure P-8) by giving directions to the respondents to look into the representation/legal notice of the petitioner dated 18.8.2018 (Annexure P-7) and pass appropriate orders keeping in view the period spent by him in rural areas within a period of three months from the date of receipt of a copy of order. Pursuant to this order, impugned order dated 9.01.2019 (Annexure P-9) was passed by respondent, whereby representation/legal notice of the petitioner was rejected on the ground that while remaining posted at Daultabad, he was stationed at Gurugram and during this period, he did not get any Rural Health Allowance and in this backdrop, his service cannot be taken as rural service. The petitioner got transferred from ESI Dispensary, Daultabad to the ESI Dispensary, Rai, District Sonapat and joined there on 12.10.2017. ESI Dispensary, Rai was earlier in rural area but vide letter dated 25.6.2018, Municipal Corporation, Sonapat has clarified that Rai falls in urban area. Thus the period from 12.10.2017 to 28.2.2018 (the date when

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the O/O Municipal Corporation, Sonapat submitted its report) can only be counted for the purpose of calculating rural service rendered by the petitioner which is less than two years. It has been further explained in the impugned order that the building of ESI Dispensary, Daultabad was stationed at ESI Dispensary No.1, Gurugram as the ESI Dispensary, Daultabad was not having its own building at Daultabad. Since the petitioner has not spent even a single day of his service in the rural area i.e Daultabad and moreover as he has been granted house rent allowance while posted at Gurugram, he cannot be granted the benefit of two years of rural service.

Learned State counsel has referred to Division Bench judgment of this Court in the case of *Dr. Himani Singh and another vs. State of Haryana and others, passed in CWP No. 10758-2018* wherein petitioners who were M.B.B.S graduates having served State of Haryana were claiming the benefit of incentivisation for the in-service candidates serving in Rural areas. The writ petitions were dismissed and it was observed that claiming an incentive is not a matter of right. Once the petitioners have been made admissible to all the benefits then simply because the areas where they have served are now excluded from the rural areas would not entitle them to raise a plea of arbitrariness.

Learned State counsel has further referred to judgment of this Court in a case of ***Dr. Narender Soni v. State of Haryana, 2018 (2) RCR***

Civil 824 wherein the petitioner who was working as Medical Officer, ESI Dispensary at village Mayyar, District Hisar challenged clause 2 of order dated 21.04.2017 vide which maximum incentive of 20% of marks obtained in National Eligibility and Entrance Test, PG 2017 is to be given to in-service candidates for admission in PG Medical Courses. The petition was disposed of and it was held that identification of difficult/remote areas have to be uniform for the purpose of all incentive schemes framed by the Government. Notification dated 5.5.2017 identifying the difficult and remote areas is only for the purpose of admission to Post Graduate Courses, hence clearly held to be in violation of the law laid down by Hon'ble the Supreme Court.

Counsel for the State has further referred to the letter dated 29.3.2019 (Annexure P-10) whereby the Director, ESI Health Care Haryana, Chandigarh has given the details regarding issuance of experience certificate to those Medical Officers who have rendered service in Rural/remote and Difficult areas. In this letter, against the name of the petitioner, in the column of length of service rendered in remote and/or difficult areas or rural areas, it is stated as 12.10.2017 to 22.2.2018 and since the petitioner has not completed two years of service in rural area, he is not eligible for NOC and only provisional NOC has been issued to him for pursuing the Postgraduate Course.

Counsel for the petitioner has argued that the service rendered by the petitioner in the ESI dispensary from 9.9.2014 to 11.10.2017 (i.e a

period of three years one month and three days) has not been included in the rural area service. Counsel for the petitioner has further referred to the notification dated 5.4.2018 (Anneuxre P-11) whereby the Medical Council of India has laid down procedure for selection of candidates for Postgraduate courses. In Rule 9, sub clause 4, it is provided as under:

(4)The reservation of seats in Medical Colleges/Institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Postgraduate Courses from the said merit list only.

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 up to 10% of the marks obtained for each year of service in remote and/or difficult areas or Rural areas up to maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test. The remote and/or

*difficult areas or Rural areas shall be as notified by
State Government/Competent authority from time to
time.”*

Counsel for the petitioner further contends as per the details of dispensaries under ESI Health Care Department, situated in rural areas, there are ten dispensaries. ESI Dispensary, Daultabad, Gurugram is running in rural area from 14.10.2017 as previously this dispensary was running in the premises of ESI Dispensary, No.1 Gurugram w.e.f the date of its inception i.e 2014. The object of setting up of ESI dispensary in the rural area was to facilitate the patients of rural areas who had the respective cards of treatment. On account of not having the infrastructure, the petitioner could not stay in Daultabad. He was posted in Gurugram and he examined all the patients from Daultabad while staying at Gurugram. Thus, the petitioner cannot be denied the benefit of incentive. Counsel for the petitioner further contends that judgment referred to by the counsel for the State in ***Dr. Himani Singh's case (supra)*** cannot be applied to the facts of the present case as in that case the area where the doctor had been working had been excluded from the rural areas and he was not held entitled to take the benefit of the rural area. However, in the case of the petitioner, ESI Dispensary in Daultabad is still in rural area. Even in ***Dr. Narender Soni's case (supra)***, the notification dated 5.5.2017 identifying the difficult and remote areas for the purpose of admission to PG Medical Courses was held

to be in violation of the law laid down by the Hon'ble the Supreme Court and thus the ratio of this judgment again cannot be applied to the facts of the present case.

Heard counsel for the parties. The petitioner in the present case has examined all the patients of ESI, Daultabad from the date of his posting at that place. However, it was on account of not having the infrastructure in ASI Dispensary, Daultabad, that the petitioner had to be posted in Gurugram as the ESI Dispensary, Daultabad was functioning from ESI Dispensary No.1, Gurugram. A perusal of the letter dated 4.4.2019 (Annexure R-1) issued by the Civil Surgeon, Health Care, Faridabad further shows that the petitioner has not been allowed rural health allowance and he has been given 20% HRA during his tenure from 9.9.2014 to 10.10.2017 which is paid in urban area. Even in the letter dated 27.2.2018 issued from the Medical Officer, ESI Dispensary, Muruthal, Sonapat, regarding information of Rural Dispensaries, ESI Dispensary, Daultabad has not been mentioned as this dispensary was functioning at Gurugram. Even as per letter dated 13.11.2018 (Annexure R-3), the ESI, Healthcare Director informed that as per information provided by Municipal Corporation on 22.2.2018, ESI Dispensary, Rai is not under Rural Area. As Dr. Sudhir joined ESI Dispensary Rai on 12.10.2017, the condition of 2 years Rural Service for PG Course required by Officer is not fulfilled. A perusal of application of transfer made by the petitioner (Annexure R-4) shows that he had been posted at ESI Dispensary Daultabad at Gurugram since 9.09.2014 and he

sought transfer to a rural station so that he can fulfill the criteria of HCMS PG policy. Even as per letter dated 10.4.2019 (Annexure R-5), from Civil Surgeon, ESI Health Care, Gurugram to Director, ESI Health Care, Haryana, Manimajra, Chandigarh, no health camp has been held by ESI Dispensary, Daultabad from 2014 to 2017. In the present case, the petitioner cannot be denied the benefit of incentive keeping in view the judgment in the case of ***Dr. Narender Soni (supra)***, wherein benefit of rural service and remote and difficult areas was given as per the notification dated 5.5.2017 where areas within the municipal council and national and State highway were termed as remote. This notification was set aside by this Court.

In ***Dr. Himani Singh's case (supra)*** also the area where the petitioners had served was later on excluded from the rural area. In the present case, the petitioner was posted in ESI dispensary Daultabad which was a rural area but on account of lack of infrastructure which is to be provided by the Labour Department itself, he had to stay in Gurugram and thereafter he had to examine all the the patients of the ESI dispensary, Daultabad at Gurugram. The petitioner cannot be made to suffer on the ground that the patients had to travel from Daultabad to Gurugram to get themselves examined and the petitioner who had examined all the patients cannot be denied benefit of rural service to claim incentive as per the notification dated 5.4.2018 (Annexure P-11). The labour Department took its own time to make available the infrastructure and after providing

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infrastructure, the dispensary has now been shifted to Daultabad w.e.f 14.10.2017.

In view of all that has been discussed above, the writ petition is allowed and order dated 9.1.2019 is being set aside. A direction is being given to respondent no.1 to grant No Objection Certificate to the petitioner for pursuing a Post Graduate Medical Science Course as an in-service candidate with full pay and continuity of service for the coming academic session. Moreover, keeping in view that the petitioner did not stay at Daultabad while being posted there as the infrastructure required for a dispensary was not available at that time, respondent no.1 shall be at liberty to put a condition in the NOC that he will serve for two years in a rural area after completing his post graduation degree as it will serve the object of setting up of dispensaries in the rural areas.

May 03, 2019
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(RITU BAHRI)
JUDGE

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