IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 4883 of 2020

Reserved on 8.12.2020

Date of decision: 11.12.2020

Dr. Sunidhi Karol ...Petitioner

Versus

State of H.P. & others ...Respondents

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?[1] Yes

For the Petitioner: Mr. Dilip Sharma, Senior Advocate with Mr. Manish Sharma, Advocate.

For Respondents 1 to 3: Mr. Ajay Vaidya, Senior Additional Advocate General.

For Respondent No.4: Mr. Sanjeev Bhushan, Senior Advocate with Mr. Jagdish Thakur, Advocate.

THROUGH VIDEO CONFERENCING.

JUSTICE SANDEEP SHARMA,J.:

Precisely, the question, which has arisen for adjudication in the case at hand, is *"Whether communication dated 9.10.2020 (Annexure P-10) is a clarification on the definition of "Field posting" in context of Post Graduate/Super Specialty Policy and Resident Doctors*

Whether the reporters of the local papers may be allowed to see the Judgment?

Policy notified vide Notification HFW-B(F)4-9/2017-II, dated 27.2.2019 and HFW-B(B)1-10/2018, dated 22.6.2019 or in the garb of clarification, attempt has been made by the respondents to modify/amend the definition of 'Field posting' and 'Distribution of Marks' prescribed vide notifications referred hereinabove after commencement of selection process?

2. For having bird's eye view, relevant facts crucial for exploring answer to aforesaid question are that on 27.2.2019, respondent-State notified "PG/Super Specialty Policy for regulating admissions to various Post Graduation and Super Specialty Courses in Medical Education applicable in the State of Himachal Pradesh" *(in short "PG/Super Specialty Policy")* (Annexure P-2).

3. Para 3.1.6 of this policy defines *"Field posting"* as under:-

> ***"3.1.6 'Field posting' shall mean the posting in various peripheral Health Institutions of the State including Primary Health Centre, Community Health Centre, Civil Hospitals, District Hospitals, Zonal Hospitals and Regional Hospitals. Teaching posts in Government Medical/Dental Colleges of the State shall be excluded from the definition of field posting but shall include the posts of Casualty Medical Officers and Medical Superintendents."***

4. It is quiet apparent from the aforesaid definition of *'Field posting'* that the posting in various peripheral Health Institutions of State i.e. Primary Health Centre, Community Health Centre, Civil Hospitals, District Hospitals, Zonal Hospitals and Regional Hospitals is

to be termed as a *'Field posting'*, whereas teaching posts in Government Medical/Dental Colleges of the State stands excluded from the aforesaid definition of *'Field posting'* save and except 'Casualty Medical Officers and Medical Superintendents' posted in Government Medical/Dental Colleges of the State.

5. Vide notification dated 22.6.2019 (Annexure P-3) 'Policy for Residency in the Government Medical Colleges in the State of Himachal Pradesh' (in short *'Resident Doctor Policy'*) came to be notified. As per second proviso to para 7.1 of aforesaid Policy, GDOs/Direct Candidates having furnished bond to serve the State after Post Graduation in lieu of sponsorship/stipend are under obligation to serve for a period of minimum one year in the *'Field posting'* or any such period which may be prescribed by the PG/Super Specialty Policy as notified from time to time to become eligible for Senior Residency in the State.

6. Vide Office Order dated 21.8.2019 (Annexure P-4), the definition of *'Field posting'* came to be further clarified by providing that period served by the candidates (GDOs/direct candidates) in the Government Medical Colleges of the State shall not be counted as mandatory *'Field posting'*, with immediate effect. However, subsequently, vide Corrigendum dated 9.12.2019 (Annexure P-5), the words *"with immediate effect"* mentioned in the 2nd last line of Department Office Order dated 21.08.2019 were deleted.

7. Subsequently, vide Notification dated 21.1.2020 (Annexure P-6), Notification dated 22.6.2019 was partially modified by excluding the "Casualty Medical Officers" of Medical Colleges from the definition of *'Field posting'*.

8. In February, 2020, Principal, IGMC, Shimla-cum-Member Secretary, Counseling Committee, issued an advertisement inviting applications for the posts of Senior Residents in Government Medical Colleges of the State. Though last date to apply in terms of aforesaid advertisement was 20.3.2020, but in continuation to aforesaid advertisement, another advertisement dated 30.5.2020 was issued inviting applications for the posts of Senior Residents/ Tutor Specialists in Government Medical Colleges of the State and this time last date for submission of application was fixed as 20.6.2020. However, vide notification dated 23.6.2020 the selection process for Senior Residents/Tutors was cancelled till further orders due to administrative reasons/decision taken in view of COVID-19 pandemic and it was informed that new schedule/date, would be intimated through the web site of DME & R, HP and on College web site.

9. Pursuant to aforesaid advertisement dated 11.8.2020 (Annexure P-1) issued by Principal, IGMC, Shimla-cum-Member Secretary inviting fresh applications for the posts of Senior Residents/Tutor (Specialists) in Government Medical Colleges of the

State, petitioner as well as respondent No.4 alongwith other eligible candidates applied for the post of Senior Residents in Community Medicine.

10. Tentative merit list of candidates, who had applied for Senior Residency in Community Medicine came to be displayed on the website of respondents No.2 in the last week of September, 2020 (Annexure P-8), wherein admittedly petitioner was shown to be eligible, whereas respondent No.4 was declared as ineligible.

11. Though, on 8.10.2020, it was notified that counseling for Senior Resident in Community Medicine shall take place on 14.8.2020 but vide letter dated 9.10.2020 (Annexure P-10), respondent-State clarified that all the GDOs, who are working under the offices of CMO/NHM, DHS and State Health and Family Welfare Training Institutions at Parimahal and Chheb are covered under the new PG/Super-Specialty and Resident Doctor Policy, so that the eligibility for Senior Residency of all those GDOs may be considered subject to fulfillment of other requirement as per PG/Super Specialty Policy dated 27.2.2019, Resident Doctor Policy dated 22.6.2019 and other regulations currently in force .

12. Petitioner though participated in counseling for Community Medicine, but respondent No.4, who was otherwise shown to be ineligible in the final merit list was allotted first post in Community

Medicine at IGMC ignoring the petitioner who admittedly was shown as eligible in final merit list displayed on website by respondent No.2 on 8.10.2020.

13. Being aggrieved on account of selection of respondent No.4 against post of Community Medicine in IGMC, petitioner submitted representation dated 14.8.2020 (Annexure P-11) to the Counseling Committee objecting to the inclusion of the name of respondent No.4 in the list of eligible candidates for the post of Community Medicine on the basis of communication dated 9.10.2012 (Annexure P-10), pointing out that the decision taken after selection process had commenced, would not apply for ongoing process, but, before decision, if any, could be taken on aforesaid representation, petitioner apprehending that post of Senior Residency in Community Medicine in IGMC, would be offered to respondent No.4 on the basis of letter dated 9.10.2020 approached this Court in the instant proceedings praying therein for following main relief(s) amongst others:-

> ***"(i) That impugned amendment/modification of the definition of "Field posting' for the purpose of Senior Residency already occupying the field vide notification dated 27.2.2019 (Annexure P-2) read with notifications dated 22.6.2019, (Annexure P-3) and 21.1.2020 (annexure P-6), under the garb of alleged clarification dated 9.10.2020, Annexure P-10, without issuing proper executive instructions, that too with retrospective effect, may kindly be quashed and set aside.***
>
> ***OR, in the ALTERNATIVE.***
>
> ***May be held prospective in nature so as to not affect the selection process initiated vide advertisement dated 11.8.2020, Annexure P-1."***

14. Having heard learned counsel representing the parties and perused the material available on record, especially clause 3.1.6 of the Policy, this Court finds force in the contention of learned counsel representing the respondents that definition of *'Field posting'* includes posting in various peripheral Health Institutions of the State and as such, it cannot be concluded that respondent by issuing communication dated 9.10.2020 have made an attempt to modify/amend the definition of *'Field posting'* and *"Distribution of Marks"* prescribed vide notifications dated 27.2.2019 & 22.6.2019 (Annexures P-2 & P-3).

15. Though, in the case at hand, record reveals that an advertisement was issued in February, 2020 for the posts of Senior Residents in Government Medical Colleges, but for administrative reasons, process initiated vide aforesaid advertisement could not be taken to its logical end and accordingly, vide fresh advertisement dated 11.8.2020, fresh applications came to be invited for the post of Senior Residents/Tutor Specialists in Government Medical Colleges of the State. Though, last date for submission of applications was 1.9.2020, but before expiry of last date, as referred above respondents vide Office Order dated 21.8.2019 (Annexure P-4) having taken note of various references received from concerned quarter clarified that period served by the candidates (GDOs/direct candidates) in the Government Medical

Colleges of the State shall not be counted as mandatory *'Field posting'*, meaning thereby, services being rendered by GDOs/direct candidates at that relevant time in Government Medical Colleges are not be counted as mandatory *'Field posting',* but otherwise definition of *'Field posting'* as provided under clause 3.1.6 of PG/Super Specialty Policy clearly provides that *"Field posting'* would mean the posting in various peripheral Health Institutions of the State, meaning thereby, respondent No.4, who after having completed Post Graduate Course in June, 2019 joined in the Office of Director of Health Services is/was very much eligible to be considered against the post in question.

16. Clause 7.1 of the Resident Doctor Policy (Annexure P-3) provides that GDOs/Direct Candidates, who have furnished bond to serve the State after Post Graduation in lieu of sponsorship/stipend, are required to serve for a period of minimum one year in field posting or any such period, which may be prescribed by the PG/Super Specialty Policy as notified from time to time before becoming eligible for Senior Residency in the State. Clause 7.2.4 of the aforesaid Policy further stipulates that the Director Medical Education & Research, Himachal Pradesh shall send the list of all the candidates (including GDOs and Direct candidates), who have applied for the post(s) to the Director Health Services, Himachal Pradesh for issuance of *No Objection Certificate* with regard to the completion of the mandatory peripheral

service and to scrutinize any discrepancy in status of a candidate with respect to his/her being a GDO or a direct candidate.

17. In the case at hand, reply filed by respondents reveals that respondent No.4, after being declared ineligible in the tentative merit list, preferred representation dated 6.10.2020 through proper channel to Government (Annexure R-2 Colly.), but before aforesaid representation filed by respondent No.4 could be finally decided, respondent No.2 i.e. Director of Medical Education and Research, Himachal Pradesh, circulated the final merit list of the candidates for Senior Residents on 8.10,2020 (Annexure P-9) showing the Private respondent No.4 ineligible for non-completion of mandatory one year '*Field posting*".

18. In the aforesaid background, respondent-State vide letter dated 9.10.2020 (Annexure P-10) reiterated and made it clear that teaching posts in Government Medical Dental Colleges of the State shall be excluded from the definition of *'Field posting',* whereas other Health Institutions of the State Government are covered under the new Post Graduate/Super Specialty Policy.

19. In the aforesaid communication, respondent-Department to clarify the matter further specifically mentioned in the communication dated 9.10.2020 that provisions of Policies, as referred above, would be applicable to all the General Duty Officers (GDOs), working in the office

of Chief Medical Officer (CMO), National Health Mission (NHM), Director Health Services (DHS) and State Health and Family Welfare Training Institutions at Parimahal and Chheb and as such, eligibility for Senior Residency of all those GDOs may be considered subject to fulfillment of other requirement as per PG/Super Specialty Policy dated 27.2.2019 and Resident Doctor Policy dated 22.6.2019.

20. After issuance of aforesaid clarification, respondent No.4 Dr. Vineet Kumar, rightly came to be declared as an *"eligible"* candidate by respondent No.2 for the post of Senior Resident in the Department of Community Medicine in IGMC, Shimla. Since private respondent No.4 Dr. Vineet Kumar was at Sr. No.2 in the merit list, he rightly came to be allotted post of Senior Resident in Department of Community Medicine, IGMC, Shimla as per his option. Record reveals that petitioner being ranked at Sr. No.3 in order of merit against two posts in IGMC, Shimla, could not be offered post at IGMC, Shimla, but was offered post of Senior Resident at Hamirpur, but she remained unwilling to join against the said post at Hamirpur.

21. Having carefully perused judgment dated 12.3.2020 (Annexure P-7) rendered by learned Single Judge of this Court in CWP No. 2888 of 2019, this Court finds no force in the submissions made by Shri Dilip Sharma, learned Senior Counsel representing the petitioner, that since claim with regard to the counting of service, rendered with

Director Health Services after Post Graduation, was contested by respondent No.2-State in the aforesaid petition, it is not open for respondent-State to take 'U' turn in the instant proceedings.

22. In the aforesaid petition, moot issue involved was *"Whether denial of the benefit of "Field posting" to Medical Officers (Specialist) posted in different Government Medical Colleges in the State of Himachal Pradesh is violative of Article 14 of the Constitution of India in view of the fact that "Casualty Medical Officers (Specialist) posted in a Government Medical College are given the benefit of "Field* posting" *for serving as such.*

23. Having perused judgment, as referred above, this Court finds it difficult to agree with contention of Shri Dilip Sharma, learned Senior Counsel that in earlier petition, stand of the respondent was that services rendered with Director of Health Services after Post Graduation cannot be termed to be *"Field posting"* in terms of definition of *'Field posting'* as provided in clause 3.1.6 of the PG/Super Specialty Policy. Otherwise also, learned Single Judge, while disposing of aforesaid writ petition, left the following question open to be decided in subsequent proceedings i.e. *"Whether medical Officer can claim benefit of "Field posting" for the services rendered in Directorate, as prayed for?*

24. During proceedings of the case, learned Senior Counsel representing respondent No.4 invited attention of this Court to the

judgment dated 25.11.2020 rendered by learned Single Judge in ***CWP No.2101 of 2020 alongwith CWP Nos.3401, 3463 and 3786 of 2020,*** wherein it has been held that candidates, who have completed one year service after completing their Post Graduation Course, shall be considered eligible for competing for the post of Senior Resident, irrespective of the place where they have served as such, until and unless the petitioner was offered appointment at a place which is termed as '*Field posting*' and he/she refused to do so.

25. Mr.Dilip Sharma, learned Senior Counsel for the petitioner, while refuting aforesaid submissions made on behalf of respondent No.4, contended that judgment as is being relied was ordered not to be treated as a precedent in future and as such, cannot be taken into consideration. However, having carefully perused aforesaid judgment rendered by learned Single Judge, this Court finds that the petitioner in that case had laid challenge to the Policy formulated by the State Government, providing therein one year's mandatory '*Field posting*'. Mr. Dilip Sharma, learned Senior Counsel representing the petitioner in that case submitted that posting of officers at a station is the prerogative of the employer and as such, condition of one year's mandatory service in an institution, which is designated as *'Field posting'* is now becoming impediment in their case as far as their eligibility to compete for the post of Senior Resident is concerned.

Learned Single Judge, agreeing with the aforesaid argument advanced by the petitioner in that petition, directed the respondent to consider the case of the petitioner qua the post of Senior Resident irrespective of the place where they served prior to their applying to the post in question. In para-7 of aforesaid judgment, learned Single Judge while noting down the request of learned Senior Additional Advocate General that judgment may not be treated as a precedent in future, has very carefully recorded that any future litigation on the issue of validity of the policy of the State Government with regard to eligibility of a Medical Officer for competing to the post of Senior Resident shall be decided on the merit of that particular case.

26. Leaving it aside, whether aforesaid judgment rendered by learned Single Judge has a bearing on the case at hand or not, this Court is of the view that since clause 3.6.1 of the Policy *ibid,* issued prior to issuance of communication dated 9.10.2020 (Annexure P-10) specifically provides that posting in various peripheral Health Institutions of the State would mean *'Filed posting'*, it cannot be concluded that respondents after commencement of selection process vide communication dated 9.10.2020 (Annexure P-10) attempted to modify/amend the definition of *'Field posting',* rather vide aforesaid communication, respondents with a view to bring more clarity in the matter reiterated that all the GDOs working under the offices of

CMO/NHM, DHS and State Health and Family Welfare Training Institutions at Parimahal and Chheb are covered under the new PG/Super-Specialty and Resident Doctor Policies. Similarly, no plausible explanation has been rendered on record to justify the action of respondents No.1 and 2, whereby they ignored the NOC issued by Director of Health Services in terms of clause 7.2.4 of notification dated 22.6.2019 (Annexure P-3), which authorizes the Director Health Services of Himachal Pradesh to issue NOC with regard to completion of mandatory peripheral service, if any, rendered by the candidates aspiring for the post(s) at Government Medical Colleges. No plausible material worth credence has been led on record to justify the action of respondent No.2 declaring respondent No.4 ineligible while issuing tentative and final merit list and as such, subsequent action of rectification of mistake carried out by respondent No.2 by declaring respondent No.4 eligible after having received clarification from respondent-State cannot be held to be illegal and cannot be interfered with. Mere issuance of final seniority list declaring the petitioner eligible and selected against the post in question would not confer any right in favour of the petitioner, especially when it stands established on record that candidature of respondent No.4, who is otherwise more meritorious than the petitioner was wrongly rejected by respondent No.2, ignoring NOC issued by Director of Health Services.

27. Consequently, in view of the detailed discussion made herein above, this Court does not find any merit in the instant writ petition and as such, the same is dismissed accordingly. Pending application(s), if any, also stand disposed of.

(Tarlok Singh Chauhan)
Judge.

(Sandeep Sharma)
Judge

December 11th, 2020
(aks)