

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

CWP-7585-2020 (O&M)

Date of decision : 30.09.2020

Dr. Vijay Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.**

Present: Mr. S.S. Duhan, Advocate for the petitioner.

Mr. Samarth Sagar, Addl. A.G. Haryana.

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**ANIL KSHETARPAL, J.**

This writ petition has been filed under Article 226/227 of the  
Constitution of India, claiming following substantive reliefs:-

*“i) A writ in the nature of certiorari for quashing of the letter/order dated 17.03.2020 (Annexure P-5) vide which respondent no. 2 has refused to issue NOC (No Objection Certificate) to the petitioner, which is required to him for appearing in counseling for NEET PG Degree/Diploma (i.e. MD/MS) Course, 2020, in a wrong, illegal, arbitrary and discriminatory manner and violating the principal of natural law of justice.*

- Further to issue a writ in the nature of mandamus directing the Respondents no. 1 and 2 to issue NOC to the Petitioner enabling him to appear in counseling for NEET PG Degree/Diploma (i.e.*

*MD/MS) Course, 2020 required for in-service doctors of Health Department, Haryana as he has qualified the NEET PG Examination, 2020 and has obtained 565 marks out of 1200 and having NEET PG 2020 rank 31013 and has also fulfilled the terms and conditions of Policy dated 19.03.2018 (Annexure P-7) required for issuing NOC with full pay.”*

The question which arises for consideration is “Whether the petitioner has been wrongly refused 'No Objection Certificate' for joining Post Graduate Course in Session 2020?”

Some facts are required to be noticed.

The petitioner was appointed as Medical Officer on 02.09.2014. After successful completion of the probation period, his appointment was confirmed w.e.f. 26.12.2016. He claims that he was keen to pursue further studies i.e. MD/MS and, therefore, he appeared for NEET PG Examination. In the year 2019 also, the petitioner applied for 'No Objection Certificate'. The petitioner claims that he appeared in NEET PG Examination-2020, held on 05.01.2020, securing 565 out of 1200 marks. He submitted an application for grant of 'No Objection Certificate' on 11.02.2020, which as noticed above, has been refused.

The State of Haryana has issued Policy Instructions for in-Service MBBS/BDS Doctors, who are interested in pursuing Diploma/PG Ddegrees/DNB Courses. It is provided that in-service HCMS/HCDS Doctors, after completion of four years of regular service with at least two years rural service or atleast two years of remote and difficult area service

in Health Institutions, will be eligible for 'No Objection Certificate', with full pay as one was drawing otherwise and the period spent on the prescribed duration of the course will be treated as service period for all intents and purposes. However, it is also provided that the application for 'No Objection Certificate' will be considered subject to certain conditions. Clause V of the Policy under the caption- Procedure of applying/issuance of 'No Objection Certificate', reads as under:-

*“(v) The applications for NOC will be considered subject to the conditions that there are no adverse remarks against the doctor (i.e. integrity/honesty/efficiency etc.) and no disciplinary proceedings under Rule-7 are pending against the officer. Any adverse reports of professional conduct will also be taken into account while considering the services of a person satisfactory service or otherwise for the grant of NOC.”*

The writ petitioner was granted provisional permission to participate in the process of ongoing counseling vide interim order dated 04.06.2020 and at the time of arguments, it was stated by the learned counsel for the petitioner that the petitioner has been admitted to PG Degree Course.

A short reply has been filed by the Director General of Health Services, Haryana. It has been brought to the notice of the Court that the petitioner had applied for grant of leave without pay from 08.08.2016 to 06.11.2016 (90 days), which was forwarded by the Senior Medical Officer to Civil Surgeon. However, the petitioner left the station without waiting for the sanction of the leave. The Civil Surgeon on 24.08.2016,

rejected the request for grant of leave due to shortage of Medical Officers in the District and directed the petitioner to join duty after obtaining permission from the competent authority. The Senior Medical Officer, vide letter dated 26.08.2016, directed the petitioner to join the duty after obtaining permission from the competent authority as the request for sanction of leave stood rejected. However, the petitioner did not join the duty. Again, a request was made to the petitioner to join the duty vide letter dated 19.09.2016 but the petitioner still did not join the duty. Hence, the Civil Surgeon, Jind, on 04.10.2016, while recommending initiation of disciplinary action, informed the Director General Health Service about the willful absence of the petitioner from 08.08.2016. The petitioner, thereafter, submitted an application on 04.10.2016, to join the duty. The Director General Health Services granted him permission on 13.10.2016, to join the duty and the petitioner consequently joined the duty on 14.10.2016. No doubt, subsequently, the Director General Health Services on 29.11.2016, sanctioned extraordinary leave of the aforesaid willful absence period.

Further, it has been stated that the Civil Surgeon deputed the petitioner to District Jail for a period of 14 days for treatment of under-trial/prisoners. The petitioner joined the jail duty on 06.08.2019 at 10:04 am and left the jail premises at 10:35 am, on the same day. One under-trial suffered an attack ( heart) on the night of 06.08.2019. The Deputy Superintendent of Jail, made a call to the petitioner informing and explaining him about the ill health of the under-trial, with a request to

immediately come for the duty but the petitioner refused to come back and attend the under-trial. The Jail Superintendent vide letter dated 07.08.2019, informed the Civil Surgeon, Jind and other officials about the incident. Thus, it is stated that the petitioner went to join the duty only for 31 minutes on 06.08.2019, out of the total period of 14 days, causing harassment of 1000 under-trial/prisoners, lodged in the prison.

It has further been pointed out that the petitioner once again applied for extraordinary leave from 02.09.2019 to 24.11.2019. The petitioner again without waiting for sanction of the extraordinary leave left the duty. On 02.09.2019, the Civil Surgeon, Jind, refused to sanction the leave and on 03.09.2019, he directed the petitioner to join his duty, however, the petitioner did not come back to join the duty. Thereafter, Civil Surgeon informed the Directorate that the petitioner was negligent towards his duty and did not care although orally warned to be careful in the future. On 10.09.2019, the Civil Surgeon, Jind, again directed the petitioner to join duty after obtaining permission from the competent authority but the petitioner still did not opt to join the duty. The Civil Surgeon also informed the Directorate in this regard. On 18.09.2019, Senior Medical Officer CHC Uchana, informed the Civil Surgeon that the petitioner did not take interest in his work and he was not sensitive towards his duty. On 01.10.2019, once again the petitioner was directed to join duty after obtaining permission from the competent authority while informing the Directorate in this regard. However, the petitioner still did not opt to join the duty. On 29.10.2019, the petitioner

was again directed to join the duty after obtaining permission from the competent authority but the position remains the same. Thereafter, Director General Health Services informed the Government vide letter dated 10.01.2020, about the conduct of the petitioner with a request to take a decision regarding initiation of disciplinary action. Thereafter, the petitioner submitted an application on 31.01.2020, in the office of Director General Health Services, Haryana, through Civil Surgeon, Jind, requesting permission to join the duty, which was granted by the Director General Health Services, on 05.02.2020. The petitioner joined the duty on 06.02.2020. Thus, it is highlighted that the petitioner willfully remained absent from duty during the period of 02.09.2019 to 05.02.2020 i.e. for 157 days. On 11.02.2020, the Government under Rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 2016, decided to initiate disciplinary proceedings against the petitioner.

This Court has heard the learned counsel for the parties and with their able assistance perused the file.

Learned counsel for the petitioner has submitted that the petitioner has already been admitted in Post Graduate Degree Course. He further contended that as of now, neither any show cause notice has been issued nor any charge-sheet has been issued to the petitioner. He further contended that in the year 2016 also, the extraordinary leave of the petitioner was subsequently sanctioned. Hence, he submitted that the writ petition should be allowed.

On the other hand, learned counsel appearing for the State,

has contended that the Policy Instructions have been issued in order to give concession/privilege to the in-service Doctors for pursuing further studies and improve their qualifications by doing Diploma/PG Degrees/DNB Courses. He submitted that in Service HCMS/HCDS Doctors, after completion of four years of regular service are eligible to be considered for 'No Objection Certificate', with full pay and the period spent on the prescribed duration of course will be treated as in service period for all intents and purposes. Hence, he submitted that the Government has in the Policy Instructions itself, laid down that applications, for 'No Objection Certificate', will be considered subject to the fulfillment of conditions, specified in the policy. He drew the attention of the Court to Clause V, which has been extracted above. Hence, he contended that the Government has rightly refused the permission.

Now the question is, Whether the petitioner is entitled to 'No Objection Certificate' for pursuing PG Degree Course, on payment of full salary or not?

On careful reading of Clause V extracted above, it is apparent that if the concerned Doctor has earned adverse remarks or if disciplinary proceedings under Rule 7, are pending or there are adverse reports with regard to professional conduct of the Doctor concerned, then the permission to grant 'No Objection Certificate', can be refused. In the present case, no doubt, as of now, neither any show cause notice has been issued nor any charge-sheet has been issued against the petitioner, however, a decision to initiate disciplinary proceedings, has already been taken at the

level of the Government, on 11.02.2020. Still further, the conduct of the petitioner would fall within the meaning of adverse report of professional conduct of a Doctor. As noticed above, the petitioner has consistently been negligent in attending to his duties. In the year 2016 also, the petitioner remained willfully absent. However, later on, the same was regularized by sanctioning extraordinary leave. Thereafter, the petitioner did not perform his duties when he was deputed to the District Jail for a period of 14 days. The petitioner even refused to attend to an under-trial, who had suffered an attack on the night of 06.08.2019, although, the Deputy Superintendent of Jail did inform the petitioner. Still further, the petitioner has remained willfully absent for a period of 157 days and in spite of repeated communications, did not come forward for considerable period to resume his duties.

In view of the aforesaid discussion, the case of the petitioner neither has merits nor he is found entitled to the relief in equity.

Keeping in view the aforesaid facts, this Court does not find that the decision of the Government in refusing the 'No Objection Certificate' to the petitioner is wrong. Hence, the petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the aforesaid order.

**30.09.2020***Pawan***(ANIL KSHETARPAL)  
JUDGE****Whether speaking/reasoned:-      Yes/No****Whether reportable:-                Yes/No**