

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

LPA No.1090 of 2019 (O&M)

Reserved on: 11.11.2021

Pronounced on : 01.12.2021

State of Haryana & others

... Appellants

Versus

Dr.Sudhir

... Respondent

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Ms.Palika Monga, DAG, Haryana, for the appellants.

Mr.Abhishek Sethi, Advocate, for the respondent.

G.S. Sandhawalia, J.

CM-1453-LPA-2021

Application for placing on record Annexures A-1 & A-2 and exemption from filing certified copy of the same, is allowed in view of the averments made in the application, duly supported by affidavit of the applicant-respondent. Said documents are taken on record, subject to just exceptions. Office to append the same at appropriate place.

CM stands disposed of.

LPA-1090-2019 (O&M)

Challenge in the present letters patent appeal, preferred by the State, is to the judgment of the Learned Single Judge passed in CWP-4315-2019, dated 03.05.2019 and the subsequent order dated 16.05.2019 wherein the review application was dismissed along with the application for impleading the Director of Medical Education & Research, Haryana and the application for clarification/modification, filed by the writ

petitioner, was allowed. In effect, the Learned Single Judge had initially set aside the order dated 08/09.01.2019 (Annexure P-9) whereby the service rendered by the petitioner in ESI Dispensary, Daultabad, District Gurugram was held not to be counted for the purpose of rural service, rejecting his claim. Similarly, the posting at ESI Dispensary, Rai, which was earlier a rural area, was also held as not liable to be counted for the said purpose and therefore, request made vide representation/legal notice dated 18.08.2018 (Annexure P-7) had also been rejected.

Vide the impugned order, the Learned Single Judge came to the conclusion that on account of not having the infrastructure at the ESI Dispensary, Daultabad, the petitioner had to be posted in Gurugram where patients were being treated from Daultabad and he had requested for transfer to a rural station so that he can fulfill the criteria of the HCMS/HCDs Post-Graduate Policy. While placing reliance upon the judgment in **Dr.Narinder Soni Vs. State of Haryana & others 2018 (2) RCR (Civil) 824**, it was held that the petitioner could not be denied the benefit and that he could not be allowed to suffer on account of lack of infrastructure which was to be provided by the Labour Department. Resultantly, directions were issued to grant No Objection Certificate to the petitioner for pursuing the Post-Graduate Medical Science Course as an in-service candidate with full pay and continuity of service, for the incoming academic sessions. However, a condition was laid that respondent No.1 would be at liberty to put a condition in the NOC that he would serve for 2 years in rural areas after completing the Post-

Graduation Degree as it would serve the object of setting up of dispensaries in the rural areas. Vide the subsequent order dated 16.05.2019, the writ petitioner was further given the benefit that since he had been given the benefit of in-service candidate with full pay and continuity of service, he was also to be granted 30% incentive as a natural consequence since it was also granted to the similarly situated Doctors who had done 2 years of rural service.

State Counsel has, accordingly, argued that as per the policy dated 19.03.2018 (Annexure P-4) and Clause (1) therein, the writ petitioner was not entitled for full pay as it could only be granted if he had 4 years of regular satisfactory service with at least 2 years of rural service in remote and difficult areas in the health institutions of Haryana. It was, accordingly, argued that the policy was in the form of incentive and it was not a matter of right and even the Director of Medical Education & Research had not been impleaded at the time of filing of the writ petition. Therefore, in the absence of the conditions in Clause 3 of the said policy having not been completed, the Learned Single Judge was not justified in issuing the said directions. It was further submitted that the petitioner, vide letter dated 04.04.2019 (Annexure R-1) was aware firstly that he had drawn 20% HRA from 09.09.2014 to 10.10.2017 for being posted in an urban area. He had not been given rural health allowance by the ESI Dispensary, Daultabad during the said period and he had been transferred to ESI Dispensary, Rai for rural service on request, on 12.10.2017, which was not a rural area, as per information

provided on 22.02.2018, which would be clear from the letter dated 13.11.2018 (Annexure R-3). Accordingly, the request dated 20.12.2016 (Annexure R-4) for being transferred in the rural area from ESI Dispensary, Daultabad was referred to. It was further contended that there was no health camp organized in Daultabad area as per information dated 10.04.2019 (Annexure R-5).

Counsel for the respondent-writ petitioner, on the other hand, submitted that when CWP-4315-2019 was preferred, interim direction dated 20.02.2019 had been passed in his favour that he was to be provisionally issued NOC for pursuing the Post-Graduate Medical Science Course. Reliance is placed upon the Sponsorship Certificate issued on 01.04.2019 (Annexure A-1) by appellant No.1, wherein no financial implication was liable to be paid by PGI, Chandigarh during the period of applicant's course and the payment was to be the responsibility of the sponsoring/deputing authority. It is, accordingly, submitted that vide interim orders dated 12.04.2019, passed in CM-5246-CWP-2019, keeping in mind that the NOC had been issued, petitioner was allowed to participate in the counselling. Thereafter, he preferred LPA-789-2019 in which interim relief had been granted on 18.04.2019 whereby one seat of MS (General Surgery) in PGIMS, Rohtak had been kept reserved. The said LPA had been dismissed on 30.04.2019 being not maintainable and the interim order had been discharged. It is submitted that as per certificate dated 11.09.2019 (Annexure A-2), attention of the appellants had been drawn by the PGIMER, Chandigarh that the petitioner had

joined as MD (General Surgery) and had been posted on 19.07.2019 in the Department of General Surgery, PGIMER, Chandigarh and that he was not liable to be paid any emoluments, stipends etc. by the said institute during his period of studies.

Counsel has, accordingly, submitted that the petitioner has been working for the last 2 years without any pay from the appellant or PGIMER, Chandigarh on account of the interim order now having been passed in the present case on 22.05.2019. He has also served the PGIMER, Chandigarh during the difficult times of Covid pandemic. It is submitted that for no fault of his, the period at Daultabad has been treated as non-rural area on account of lack of infrastructure, by appellant No.1 and he has wrongly been denied the benefit of the policy of the State for seeking admission in the Post-Graduate Course. Counsel has, however, very fairly conceded that the petitioner is willing to refund the HRA which was received by him on account of having rendered duties at Gurugram and having stayed at Gurugram and the fact that petitioner cannot have both the benefits, and that he would abide by the condition to refund the HRA.

A perusal of the paperbook would go on to show that it is not disputed that the petitioner was initially appointed as Medical Officer in ESI Health Care, Daultabad, Haryana at ESI Dispensary No.1, Gurugram on 12.08.2014 (Annexure P-1) against a vacant post. It is his specific case that the dispensary at Daultabad was not having its own building and it was functioning within the dispensary at Gurugram and similarly, the

ESI Dispensary, Basai Road, Gurugram was also functioning from the same premises. It has further been pleaded that ESI Dispensary, Daultabad falls in a rural area. Reliance has been placed upon letter dated 12.10.2015 (Annexure P-3) which was addressed to the Director, ESI Health Care by the Addl. Commissioner and Chief Executive Officer, DRDO, Gurgaon. Accordingly, it is his case that he had worked for 3 years and 1 month at the ESI Dispensary, Daultabad, as per the performa issued on 16.04.2018. The posting at Daultabad was against a regularly sanctioned post and the patients were also coming from ESI Dispensary, Daultabad. This factum is not denied in the reply filed to the writ petition and the defence of the State was to the extent that the ESI Dispensary was functioning in the building of ESI Dispensary, Gurugram, as the same was not having a building at Daultabad. It has further been pleaded that Daultabad is a rural area but the petitioner was stationed at Gurugram as Daultabad was not having its own building and therefore, the rural service had not been rendered by the petitioner during the period of his posting and therefore, he could not be given the said benefit.

Further it has been pleaded that he claimed HRA at Gurugram which is an urban area and he has not been given the rural health allowance of rural area. Thus, in effect, it would be clear that it is on account of the State's own lack of infrastructure his service was being treated as one not in the rural area, to deny him the benefit of the Post-Graduate Policy, though the petitioner was posted at Daultabad, which falls within a rural area, as per Annexure P-3. The Learned Single Judge,

therefore, was right in holding that he could not be made to suffer on this ground as he had examined the patients from Daultabad who were from the same rural area and if the Labour Department had taken time to make available the infrastructure and after providing the same, shifted the dispensary to Daultabad from 14.10.2017, he could not be denied the said benefit.

It is also pertinent to notice that the petitioner, on coming to know that his posting was not being considered as rural service, had requested on 20.12.2016 itself vide Annexure R-4 that he be posted to a rural station so that he could fulfill the criteria of the Post-Graduate Policy and sought postings at 4 different stations if they were to be considered as rural. Accordingly, he had been posted at Rai on 12.10.2017, which would be clear from the certificate dated 16.04.2018 (Annexure P-6) which showed that he had served from 09.04.2014 to 11.10.2017 at Daultabad for a period of 3 years, 1 month and 3 days and from 12.10.2017 to 16.04.2018, he had served at ESI Dispensary, Rai which was for 6 months and 5 days which was also a rural area initially. The total period of rural area, thus, as per the certificate, was 3 years 7 months and 7 days. The period at Rai was further truncated in view of the fact that Rai was brought within the limits of Municipal Corporation, Sonapat, as per information supplied on 22.02.2018, which would be clear from the letter dated 13.11.2018 (Annexure R-3). Therefore, petitioner's request for granting the NOC had been rejected on 24.04.2018. Directions had been issued in CWP-24123-2018 on

20.09.2018 (Annexure P-8) to look into the representation dated 18.08.2018, which led to the passing of the impugned order dated 08/09.01.2019, which was subject matter of challenge in the writ petition.

The relevant conditions of the policy dated 19.03.2018 read as under:

“(a) 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' This policy will come into force from the academic year 2018. All PG policies issued prior to this PG policy stand superseded with this policy'.

GENERAL CONDITIONS

(1) 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.

(2) Before completion of 2 years, the doctor who wishes to pursue will have to RESIGN from service and will not be considered as an candidate.

(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 remunerations 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 the Institution to the office of Director General Health, Services, Haryana.”

A perusal of Clause (1) of the above policy would go on to show that any in-service HCMS/HCDS doctor, on completion of 2 years of regular satisfactory service, was eligible for grant of the NOC for pursuing the PG Diploma/Degree/DNB courses but the same was to be without any pay. The period was to be treated as extra-ordinary leave, without pay and the service was to be protected for all purposes including increment, seniority, pension etc., as per entitlement. Such persons were also to be entitled for stipend, if available.

It is not disputed that vide communication dated 01.04.2019 (Annexure A-1), the appellants have sponsored the candidature of the petitioner subject to the fact that payment would be responsibility of the sponsoring/deputing authority. On the strength of the said sponsorship, appointment order was issued by the PGIMER, Chanidgarh, to the petitioner on 11.09.2019 (Annexure A-2) after his joining on 19.07.2019, on the condition that he would not be paid any emoluments/stipend during his period of studies. Thus, it would be apparent that from both ends petitioner is not being paid anything for the period of his service, which would be highly unjust for a doctor who is serving the society. He cannot be denied the benefits of his pay and who be expected to work

during his Post-Graduate course without any financial emoluments.

Clause 3 further provides that after having 4 years of regular satisfactory service out of which, 2 years of remote and difficult areas of service in any health institution of Haryana, the doctors who are to be eligible for NOC and can claim pay. The period prescribed for the said duration of post was also to be treated for in-service period, for all intents and purposes. The same is to be subject to deposition of stipend received on account of PG course in the State Treasury. It is not disputed that the petitioner has the necessary 4 years of service and if the period from 30.08.2014 onwards is to be counted before joining on 19.07.2019, the period at Daultabad from 09.09.2014 to 11.10.2017, which was for 3 years, 1 month and 3 days, would entitle the petitioner for the benefit of the said Clause. It is only on account of lack of infrastructure, the dispensary at Daultabad was functioning from Gurugram. He could not be put to a disadvantage on account of the fact that he was posted at a rural dispensary which was functioning at Gurugram from the premises of the main dispensary, in the absence of the facility being available at Daultabad.

State itself has admitted that various ESI dispensaries at Gurugram were functioning from the ESI Dispensary No.1, namely, the one at Basai Road and ESI Dispensary No.2 & 3 were also functioning from the main ESI Dispensary No.1. The factum of the dispensary at Daultabad being in rural area is an admitted fact as per communication dated 12.10.2015 (Annexure P-3) along with other dispensaries namely

ESI Dispensary No.1, Manesar, ESI Dispensaries at Binola and at Kasan. The rest of the ESI Dispensaries in Gurugram fell in the urban area and therefore, the petitioner cannot be denied the benefit mainly on account of being stationed at Gurugram. Therefore, the Learned Single Judge did not err in any manner in granting the relief to the writ petitioner. The benefit of 30% incentive with full pay and continuity of service is a natural corollary which has to be paid, keeping in view the fact that the PGIMER, Chandigarh is also not paying any stipend to the petitioner.

Accordingly, in view of the above discussion, the present appeal is disposed of, with the following directions:

- (1) The order of the Learned Single Judge dated 03.05.2019 is upheld. Resultantly, he will also serve the State after his Post-Graduation Course is completed, in a rural area, for a period of 2 years, as directed by the Learned Single Judge as the State would benefit from his experience which he would have gained during his period of Post-Graduation in the PGIMER, Chandigarh and poor patients in rural areas would further be the direct beneficiaries.
- (2) However, the writ petitioner shall refund the HRA, which he has received during his period of posting at Daultabad, while stationed at Gurugram, after adjusting the rural area allowance which was to be paid to him.

(G.S. SANDHAWALIA)
JUDGE

December 01, 2021
Sailesh

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No