

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

CWP NO. 27781 OF 2018 (O&M)

DATE OF DECISION : 02.12.2021

Dr. Sagar Khera

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. S.P. Arora, Advocate and
Mr. Himanshu Arora, Advocate,
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Petitioner herein, a serving physician/medical officer in State of Haryana and an aspirant of doing his masters in Medicine at Post Graduate Institute of Medical Education and Research, Chandigarh (hereinafter referred to as "PGIMER"), having been successfully granted admission in the course in PGIMER, is aggrieved that despite having been given 'No Objection Certificate' by the State along with an undertaking that after completion of his masters, there shall be a five years bond period within which he cannot quit service but at the same time, he has neither been paid any stipend and/or subsistence allowance either by PGIMER or his salary by the parent department.

2. Issuance of an appropriate writ in the nature of mandamus has been sought, *inter alia*, pleading discrimination as similarly situated

other medical officers on the one hand have been given the benefit of full salary and on the other hand, the petitioner has been denied the same, *inter alia*, on an ostensible ground that he has not rendered mandatory two years of rural service in the State so as to deserve the benefit of salary while pursuing his masters in PGIMER.

3. In fact the grievance of petitioner is succinctly summed up in notice of motion order dated 17.01.2019 passed by my learned Sister RituBahri J., which is reproduced herein below :

“The short question for consideration in this petition is that the petitioner who was appointed as a Medical Officer in ESI Department which is under the Labour Department. Labour Department was issued NOC to the petitioner to do MD from PGIMER, Chandigarh. He has not been paid any stipend by the Department keeping in view the general conditions of the policy dated 19.03.2018 which has been reproduced in para No. 3 of the written statement. As per the said general conditions of the policy, condition No.3 is that in-service doctor, if he wishes to do post-graduation degree he has to do four years of regular satisfactory service which will include two years rural service.

The petitioner, who is present in Court, has argued that the above said condition is not applicable to the petitioner as he is working in the Labour Department and this policy is applicable only to the doctors who are working in the Health Department and moreover, there is no rural area in the Labour department where he can serve.

Learned State counsel, on instruction from Mr. Pawan Kumar, Asstt. from the Department submits that no doctor from the Labour Department working under the ESI Scheme has ever been sent to the rural duty in the Health Department.

Learned State counsel will verify the fact that as to how the policy dated 19.03.2018 is applicable to the

doctors of Labour Department where no rural dispensaries are in existence.

Adjourned to 11.02.2019”

4. Subsequently, when the matter was heard by the same coordinate Bench, following order dated 11.02.2019 was passed:

“Heard learned counsel for the parties.

The petitioner is a doctor and is working in Labour Department. The service of the petitioner is governed by the Rules of the health department, as per Annexure R-1. In the written statement filed on 05.12.2018, it has been stated that till date the respondent-department is following the rules and policies of Health department. A bare perusal of condition No. 3 of policy dated 19.03.2018 shows that any in-service HCMS/HCDs doctor wishes to do PG Degree/Diploma/DNB courses after completion of four years of regular satisfactory service with at least 02 years rural service/at-least 02 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.

Petitioner has handed over one order dated 03.01.2019 wherein one order was passed in favour of one Doctor Himanshu by giving him benefit of full salary while issuing NOC. This doctor is similarly situated to the petitioner.

List on 27.02.2019.

In the meantime, learned State counsel will file a better affidavit giving details of the doctors who are working in Labour Department and are not being allowed the benefit of full salary in view of clause 03 of the policy dated 19.03.2018. Learned State counsel shall further explain that why benefit of full salary cannot be extended to the petitioner, as the same benefit has already been granted to Doctor Himanshu”.

5. It would also be apposite to reproduce subsequent order by another co-ordinate Bench headed by my learned Brother Rajbir Sehrawat, J. who passed an order dated 26.03.2021 as below :

“The counsel for the petitioner submits that, on the one hand; the State is not paying the salary for the study leave to the petitioner and, on the other hand; they are insisting upon a bond after completion of the MD Degree by the petitioner. It is submitted that unless the government pays the salary for the duration of acquiring the MD Degree, the respondents are not entitled to bound down the petitioner to any such bond. It is further submitted that otherwise also, a similarly situated person has already been paid the salary by the department for the duration of degrees.

Counsel for the State seeks some more time to get instructions on this aspects.

Adjourned to 30.4.2021.”

6. A collective reading of the aforesaid three orders would reveal that no doubt the applicable policy envisages that two years of rural service is mandatory in order to get No Objection Certificate from the State along with full salary in order to pursue Masters’ degree coupled with signing of service bond of five years after completion of Masters’ degree.

7. Before proceeding further, it will also be apposite to reproduce relevant extract of the policy which has been relied upon by the respondents to deny the benefit to the petitioner. The same is as below:

“(1) Any in-service HCMS/HCDs doctor who has completed 02 years of regular satisfactory service will be eligible for grant of NOC for pursuing PG Diploma/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) xxxx

(3) Any in-service HCMS/HCDS doctor wishes to do PG Degree/Diploma/DNB courses after completion of 04 years of regular satisfactory service with atleast 02 years rural service/atleast 02 years of remote and difficult areas service in Health Institution 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 required to give a certificate/affidavit in this regard duly attested/verified by head of the Institution to the office of Director General Health Service, Haryana.

(4) to (8) xxx”

8. In the written statement filed by the respondents, long and short of the defense taken is that as per the aforesaid policy, the petitioner is not entitled to any salary and as far as No Objection Certificate is concerned, the same has already been given to him and in view of his having not rendered rural service, salary has rightly been denied to the petitioner.

9. Having heard rival contentions of learned counsels for the parties, I do not find any substance in the stand taken in the written statement and also the argument of learned State counsel which is based on defense taken in the written statement.

10. Perusal of the policy reveals that rural service is required to be carried out but only if the same is offered to a person. Here is a case

where concededly the petitioner was deputed in Labour Department in ESI Dispensary in an urban area which do not offer any opportunity of rural posting. The petitioner could not have been expected to stop going where he has been posted and insist that he should be transferred elsewhere, since the matters of transfer and posting are only in the hands of administrative superior authorities. It would have been another matter had he been offered to serve in the rural area/dispensaries in terms of the policy and he had declined to do so that the benefit of salary could have been denied to him. In fact here is a case where shoe is on the other foot. The petitioner was sent to ESI dispensary. There is an unequivocal stand that no doctor from the Labour Department working under the ESI Scheme has ever been sent to the rural duty in the Health Department, since there are no ESI dispensaries available in the rural areas.

11. Also to be noted that in the course of hearing, departmental representatives are present to assist the learned State counsel and on a Court query, they are unable to show anything on record from which it could be deciphered that on a rural posting becoming available the same was circulated at the ESI dispensary where the petitioner was posted and he specifically declined to avail the opportunity.

12. In the premise, the writ petition deserves to be accepted and is accordingly allowed. The respondents are directed to pay the petitioner salary with effect from the date when he was relieved from his parent department i.e. 28.07.2018 till its actual payment along with interest @ 6% per annum, to pursue his Masters' degree at PGIMER.

13. The insipid argument of learned State counsel that in case a serving physician has not rendered rural service, the same automatically disentitles him to seek further career progression to do his Masters'

degree is being noted only to be rejected. It is unfathomable that a graduate in medicine would like to block his further career by not pursuing his Masters if given the opportunity and ceases to be competent enough to do so merely because it is not within his hands to render rural services.

14. Be that as it may, as already narrated above, it is not the case that the petitioner was given an opportunity to render rural service and he declined. If that had been so, perhaps there would have been some substance in the argument of learned State counsel.

15. With the aforesaid observations, the writ petition stands allowed.

DECEMBER 02, 2021
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No