

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

CWP-10102-2016 (O&M)
Date of decision: 02.08.2022

Dr. SANGEETA ARORA

...Petitioner

VS

STATE OF HARYANA AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Ms. Ritu Pathak, Advocate,
For the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of mandamus directing the respondents to issue 'No Objection Certificate' in favour of the petitioner enabling her to pursue higher studies.

2. Learned counsel for the petitioner submits that the petitioner, who is 48 years of age, is working as Medical Officer at Government Hospital Rohtak. She wanted to pursue higher studies and applied in SGT University, Gurgaon for M.D.in Nonclinical subjects for the sessions 2016-17 and passed the entrance test as well as counseling held on 07.05.2016 and submitted original documents along with a fee of Rs.25000/-. But the petitioner has not been issued NOC by the department and was declined by making reference to Policy (Annexure P-6) on 31.03.2011.

3. Learned counsel submits that the policies for higher education are being revised many times and the policy dated 31.03.2011 (Annexure P-6) has also been revised vide memo dated 04.03.2014 (Annexure P-7) where

there is no upper age limit and there is further no clause of NOC by the department.

4. I have heard learned counsel for the parties and gone through the case file.

5. My learned Brother Amol Rattan Singh, J. (who was then seized of the matter) passed the following order dated 19.07.2017:-

“Though in the order dated 20.05.2016 it has been observed (obviously as a prima facie observation since the order says that eventually the decision to allow the petitioner to proceed with the course would be subject to the final decision in the writ petition), it is the specific contention of learned State counsel that the policy of 2014, Annexure p-7, is only an amendment of the existent policies dated 23.12.2011, 30.05.2012 and 11.03.2013, and not a ‘replacement policy’.

Therefore, the observation to the extent that the 2014 policy does not lay down an upper age limit of 48 years, is erroneous, because though amendments as have been made vide which the policy of 04.03.2014 would prevail over the previous policy, however, those clauses of the previous policy as remain un-amended, would obviously continue to govern the field.

Learned State counsel further points to the fact that the stand of the respondents in the written statement is not that the petitioner cannot pursue higher studies at all, but it is only that she cannot pursue them in terms of the policy of 2014 and the earlier existing policy, by which a persons’ age must be up-to 45 years, the rationale being that a bond of 07 years continuation in service after the study period is over, has to be executed by the employee, and since the case of the pre-mature retirement of an employee has to be considered at the age of 55 years, the period left over after the study period is over, very often goes beyond the age of 55 years. Hence, the rationale adopted by the Government in its policy cannot be found to be faulty.

The policy further provides that 15 employees who are allowed to pursue further studies, (in terms of the policy), would be granted full pay during the period of such studies, whereas in case a person applies for such higher studies simply under the provisions of the Civil Service Rules/Study Leave Rules 1963, full pay may not be admissible.

Learned counsel for the petitioner seeks time to go through the relevant provisions of the Civil Service and the Study Leave Rules and address arguments further.

Adjourned to 02.08.2017.

No request for adjournment shall be entertained on the next date of hearing.”

6. At this stage, only controversy that remains for adjudication is whether after conclusion of the post-graduation course by the petitioner, she is willing to execute the bond of 7 years further continuation in service after completion of aforesaid course?

7. Learned counsel for the petitioner submits that petitioner is slated to superannuate in the year 2027.

8. Be that as it may, it transpires that during pendency of the writ proceedings, petitioner had earlier rendered 3 years of service out of 7 years and only 4 years are left. Given that she is slated to superannuate in the year 2027, learned counsel submits that petitioner has already furnished a requisite bond as well as undertaking as contained in Annexure P-9 Colly.

9. That apart, my attention has been drawn to policy dated 04.03.2014 (Annexure P-7) which is the amendment to earlier policy i.e., 23.12.2011 (Annexure R-1). The said earlier policy dated 23.12.2011 has been relied upon by the respondents to deny the petitioner NOC on the ground that she was 48 years of age and policy mandated the upper age limited to be 45 years, she was, therefore, not entitled to do the post-graduation course. While doing so, later policy i.e. 04.03.2014 has given a complete short-shrift, which clearly states as below:-

“The existing policy of Department was circulated vide Memo of even No. dated 23.12.2011, 30.05.2012 and 11.03.2013. The following amendments are done in the existing policy, which will be applicable from the Academic Session 2014-2015.

1. In case of those doctors who had acquired a PG diploma before entering the service and want to appear for Post Graduate Degree in any stream mentioned in this policy, the mandatory rural service of two years will not be required. Similarly, doctors who have been trained in LSA/Emoc and Ultrasound are also exempted

from condition of rural service of two years. However, both these categories will be required to complete four years of regular satisfactory qualifying service.

- 2. If any doctor wishes to do PG Degree/Diploma before completion of four years then, he can do so provided he has completed two years of satisfactory service/ after successful probation period. However, this period will be treated as Extra Ordinary Leave without pay. The service however will be protected for the purpose of increments, seniority and pension. Such persons will also be entitled to stipend if available in the institution. In case any doctors wants to do PG Degree/Diploma before completion of two years he will have to resign.*
- 3. Doctor after seeking admission in PG, will pay their fee and other charges for the course or hostel etc. by himself/herself.*
- 4. The applicant doctors should have completed four years of service on 31st March of the year in which is seeking admission.*
- 5. If any doctor after four years of satisfactory qualifying service wishes to do PG course in any other specialty (beyond the list given in policy) in the private institutions, he will have to seek extra ordinary leave without pay. His service, however, will be protected for the purpose of increments, seniority and pension. Such persons will also be entitled to stipend, if available in the Institution.*
- 6. If a doctor has not completed their compulsory Government service after PG as per bond condition he/she shall deposit their bond money to the Government with interest @10% as simple interest from the date of concerned remained absent from duty/job.*
- 7. In case the doctor leaves the course of study mid-way without completing the same to the satisfaction of the institution due to such illness/disability/disease so as to render him or her unable/unfit to pursue the course to the satisfaction of the Government, then the penalty clause shall not be applicable.”*

10. A perusal of the above leaves no manner of doubt that the policy of 2014 was in supersession/amendment of the earlier existing policy of 2011 wherein the upper age limit clause was deleted and all that was required on the part of the serving medical officer she/ he should have rendered 4 years of service.

11. In the premise, observations made by my learned Brother as above with which I am in agreement, are made absolute.

12. Writ petition is allowed. Respondents are directed to pay the petitioner’s salary for the period it was withheld on the ground that being overage, she was not entitled to do post-graduate course. Let the needful be done within a period of 3 months from today.

(ARUN MONGA)
JUDGE

August 02, 2022
Vandana

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