

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

CWP-15489-2017

Reserved on :08.07.2022

Pronounced on :20.07.2022

Director Principal Government Medical College & Hospital, Chandigarh
... Petitioner

Versus

Central Administrative Tribunal, Chandigarh Bench, Chandigarh &
others
... Respondents

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

Present: Mr. Parminder Singh Kanwar, Addl.Standing Counsel,
U.T.Chandigarh.

Mr.Varun Veer Chauhan, Advocate, for respondent No.2.

G.S. Sandhawalia, J.

Challenge in the present writ petition, filed under Article 226 of the Constitution of India, by the petitioner, is to the order dated 20.09.2016 (Annexure P-4) passed by the Central Administrative Tribunal, Chandigarh (for short, the 'Tribunal') wherein direction had been issued to allow respondent No.2 to be relieved for taking up the foreign assignment in Oman Medical College subject to his fulfilling the prescribed financial and other conditions that may be enforced for officers of the Chandigarh Administration taking jobs outside the administration on foreign service. Resultantly, rejection letter dated 22.08.2016 (Annexure A-1) wherein petitioner-Administration had denied the claim of respondent No.2 to join as Associate Professor at Oman Medical College, on contractual basis by holding out that he would have to resign from the present post, was quashed.

Counsel for the petitioner-Hospital has vehemently

submitted that the circular dated 29.08.2005 (Annexure A-2) on the basis of which respondent No.2 was seeking permission to go abroad was only for the purpose of sending a employee abroad for a conference for a limited period and it would not benefit the Administration in any manner and it was not for employment during the period of service. Reliance was also placed upon the subsequent instructions dated 30.12.2015 (Annexure A-3) wherein decision was taken that faculty members and officials of the Government Medical College & Hospital, Chandigarh can go abroad on Government expenses provided they were presenting a paper or chairing a Session at the conference. It is thus submitted that the Tribunal exceeded its jurisdiction while quashing the said decision dated 22.08.2016 and ruling in favour of the private-respondent. It was further argued that merely on account of the other State Governments allowing their medical professionals to take up such assignments would not bind the Chandigarh Administration to take such a decision and therefore, the Tribunal was not correct in issuing the necessary directions.

Counsel for respondent No.2, on the other hand, submitted that respondent No.2 had applied on time and had been granted the requisite permission which had been approved by the concerned Secretary of Medical Education & Research, Chandigarh on 22.11.2015 which would be clear from the letter dated 07/08.12.2015. It is submitted that the policy dated 29.08.2005 (Annexure A-2) provided for foreign assignment and also further provided that a person can proceed abroad only after getting the leave of kind due sanctioned. There was a facility

to retain the Government accommodation but the period could not exceed 2 years. It is submitted that the argument raised that one can go abroad only for the purpose of conference was without any basis. It is submitted that even before the Tribunal, the stand taken was that a person cannot be allowed to do a private job in a private institution. He therefore, submitted that the petitioner was estopped from declining permission on the principle of estoppel. Lastly, he argued that the subsequent instructions dated 30.11.2015 would not be applicable as the employee was not seeking any funds from the Administration.

A perusal of the impugned order would go on to show that the Tribunal came to the conclusion that the policy dated 29.08.2005 did not provide for any discrimination between a faculty member proceeding abroad on a foreign assignment to a Government organization or a private body. It was held that the same would help the faculty members in developing themselves further and would expand their range of experience and understanding of the field in which they are working and the fact that the foreign assignment would attract higher remuneration and in the present case, NOC was already given.

The Oman Medical College which was a private institution in the Sultanate of Oman had been offering Degree Programmes which were being developed in academic partnership with West Virginia University School of Medicine in the United States of America. Thus, teaching posts in various faculties had been advertised in the specialty of ENT permission for which had been applied for on 14.08.2015

(Annexure A-5) to the Director, Principal, Government Medical College & Hospital, Chandigarh for the necessary NOC by the private-respondents and the experience certificate which was to be for a minimum of 3 years in an accredited Medical School. The necessary certificate was given on 07/08.12.2015 (Annexure A-6) after taking approval from Secretary of Medical Education & Research, Chandigarh Administration by noting that the employee was working as an Associate Professor since 18.11.2005 on regular basis and was appointed through the Union Public Service Commission. Prior to that since he was also working from 23.03.1999 on contract basis and had been re-designated as Associate Professor in his own pay-scale w.e.f. 01.11.2006 he thus, was granted the NOC for the post of Teaching Faculty in ENT at the said college at Oman. Respondent No.2 had also written to the Director of the GMCH on 27.01.2016 (Annexure A-8) that as per the appointment offer, the said post was for one year, renewable on yearly basis and asked for Ex-India leave and permission to retain the residential accommodation while undertaking that the financial liability if any would be paid by him as per the rules.

Apparently, on 01.07.2016 when the said employee asked to be relieved from the Department so that he could join the assignment w.e.f. 01.08.2016 he was given requisite shock treatment vide communication dated 22.08.2016 (Annexure A-1) that his request sent to the Administrative Department, Chandigarh Administration on the ground had been received back that the matter was not covered under any

rules or the instructions. The said respondent was also under pressure to join at Oman which would be clear from the letter dated 21.08.2016 (Annexure A-10), which would go on to show that the Medical College at Oman noted that on not getting any definite time-line from the employee, irreparable loss was being caused to the institution by not adhering to the schedule of joining. The said respondent was also put to caveat that he would be asked for the necessary monetary compensation in case of not joining.

The policy guidelines of the Government Medical College and Hospital, Chandigarh on the basis of which counsel for the petitioner has argued that the permissibility to retain the Government accommodation is provided and the fact that he could go abroad for a period of 2 years at a stretch by taking extraordinary leave would go on to show that there were various conditions for granting such permissions. The said permissions included that the applicant must be a regular specialty member having cleared the probation period satisfactorily and having completed 5 years of service in the college. There was to be no charge-sheet or enquiry pending against him and prior permission had to be sought before proceeding to avail the foreign assignment. The Head of the Department was also to ensure that at least 50% of the faculty members are available and that the work would not suffer in the absence of the said faculty member. The leave of kind due was to be sanctioned from the competent authority by getting the bond equal to the amount of 3 years of salary and to serve the institute for a period of 3 years on return

and availing the benefit of Government accommodation was permitted. The applicant could proceed abroad for obtaining specialized knowledge, experience, training, skill or fellowship for a period not exceeding 2 years at a stretch and in the event of failure of joining, the lien was automatically to expire and he would be deemed to have left the institute permanently. The period of leave was to be treated as extraordinary leave within the period of 2 years. There was also a bar that the faculty member returning from foreign assignment exceeding one year would not be eligible for another assignment for a period of 3 years and the total period of foreign assignment shall not exceed 5 years during the entire service period of the faculty member. Clause 15 further provided that all the benefits and knowledge gained abroad during the foreign assignment would be applied in promoting the interests of the institution and the public at large. The said guidelines issued by the Secretary of Medical Education & Research, Chandigarh Administration read as under:

“Subject: Framing of policy guidelines for grant of permission to the faculty members/officials of GMCH, Chandigarh for attending Conference/Symposium/Seminar/Workshop/ Fellowship /Foreign Assignment/ Training Programme/ Specialized Study etc. at International level.

Sir,

I am directed to refer to the subject cited above and to say that the Department of Medical Education & Research, Chandigarh Administration considered the matter to frame the policy guidelines regarding grant of permission to the faculty members/officials of GMCH, Chandigarh, for attending Conference/ Symposium /Seminar/ Workshop/ Fellowship/ Foreign Assignment/Training Programme/Specialized Study

etc., abroad. After careful consideration and with the approval of the Advisor to the Administrator, UT, Chandigarh, it has now been decided to allow regular faculty members/officials to attend Conference/Symposium/Seminar/Workshop/Fellowship/Training Programme/Specialized Study etc., at International Level subject to fulfillment of the following conditions: -

1. That the applicant must be a regular faculty member/employee of the Institution.
2. That the applicant must have cleared probation period satisfactorily.
3. That the applicant must have completed 05 years service on regular basis in GMCH, Chandigarh.
4. That no charge-sheet/inquiry is pending or contemplated against the applicant.
5. That the applicant must seek prior permission of the competent authority before proceeding to avail foreign assignment otherwise disciplinary proceedings shall be initiated in absentia against the delinquent officer/official.
6. That the applicant must get his/her application forwarded through the Department/Institution. The HOD concerned, before forwarding the application, must ensure that atleast 50% of the faculty is available in the Department and spell out in objective terms that the work will not suffer in any way during the absence of the concerned faculty member/official. The competent authority may award permission after looking into the requirements/interests of the institution and public at large.
7. That the applicant shall proceed abroad for the above purpose only after getting the leave of kind due sanctioned from the competent authority. A bond of an amount equal to three years salary or to serve the institution for a period of 03 years on return, shall have

to be executed.

8. That the applicant may avail the facility of Govt. Accommodation during such tenure as per provisions contained in GFR.
9. That the permission will be granted keeping in mind the patients/students care/requirement of the faculty member/official for the Department/office concerned.
10. That the applicant will be permitted to proceed abroad for obtaining specialized knowledge/experience/training/skill or fellowship etc. for a period not exceeding 2 years at a stretch. In the event of failure of joining within 02 years, his/her lien will automatically expire and he/she shall be deemed to have permanently left the Institute from the original date of relief. In case of return within 2 years, the period of leave will be treated as Extra Ordinary Leave.
11. That the applicant shall have to follow the instructions issued by the Government of India from time to time for going abroad.
12. That the funds are available for this purpose with the Department.
13. That the faculty member/official returning from foreign assignment exceeding one year will not be eligible to go for another assignment for a period of 3 years.
14. That the total period of foreign assignment shall not exceed 05 years during the entire service of the faculty member/official.
15. That the beneficiary shall disclose all benefits availed and the knowledge gained abroad during the Conference/ Symposium /Seminar/ Workshop/ Fellowship/Foreign Assignment/Training Programme/ Specialized Study etc., and shall make every effort to apply the same in promoting the interests of the institution and the public at large.”

A perusal of the same would go on to show that the argument raised by counsel for the petitioner is fallacious that it is only for the purpose of a conference and rather it can extend upto a period of 2 years and the faculty members are permitted to avail the facility of Government accommodation during the pendency of the said opportunity. The same is obviously for the purpose of benefit of the family members which in the present case is stated to have benefitted from the said arrangement as they never accompanied the private-respondent who had gone abroad. It is, thus, apparent that the said argument raised is just an argument in despair and rather the Tribunal was justified in holding that the rich experience which was to be gained by a foreign assignment can improve his professional capability.

As noticed, the applicant had gone against a teaching faculty post in Oman Medical College and thus, would benefit from applying the said experience as the said college was associated further with the West Virginia University School of Medicine in the United States of America. Even otherwise, we are of the considered opinion that principle of estoppel would also come in the way of the institution which initially had granted the requisite NOC on 07/08.12.2015 (Annexure A-6) after taking approval from the concerned Secretary of the Administration. Therefore, it cannot be allowed to wriggle out of its earlier commitment at the cost of the private-respondent who is now stated to have come back after his foreign assignment. As mentioned above, the prospective employer had already warned that it would ask for compensation if the person did not

report for duty in pursuance of the advertisement which had been applied for by him and therefore, the petitioner-Administration was not correct in wriggling out of the commitment given to him.

Reference to the subsequent policy dated 30.12.2015 is of no avail which would go on to show that for going abroad on Government expenses conditions were put that the person concerned has to chair a Session or present a paper. Even otherwise, the said letter talks about the conditions of the communication dated 29.08.2005 shall remain the same and therefore, it applies to a different field altogether. That the foreign trip would not benefit the Administration is without any basis as a wholesome reading of the above-said policy of the College itself which has been issued by the Secretary, Medical Education & Research, Chandigarh Administration would be binding upon it which provided for the permission for necessary foreign assignment from the concerned Secretary of the Administration.

Even otherwise, in the present case, specific averments were made in the Original Application also that similarly situated persons of the Institute had been allowed to go and examples had been given in para No.5(ii) of Dr.Arjun Dass, Dr.Savita Basu, Dr.Sanjay D. Cruz and Dr.Alka Sehgal. The contents of the said paragraph were admitted by the Chandigarh Administration in its reply. Therefore, on the ground of discrimination also, the Administration could not have denied the benefits to the private-respondent. The said plea has also been taken in the written statement filed by respondent No.2 in para No.3 before this

Court which has not been controverted in any manner by the petitioner by filing a counter. Therefore, this Court is of the considered opinion that the said respondent could not be singled out for declining permission not being granted to go abroad.

Resultantly, keeping in view the above discussion, this Court is of the considered opinion that the order of the Tribunal dated 20.09.2016 (Annexure P-4) is not liable to be interfered with. Accordingly, the present writ petition is dismissed.

(G.S. SANDHAWALIA)
JUDGE

July 20th, 2022
sailesh

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No