

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

CWP No. 17568 of 2022 (O&M)

Date of Decision: 23.08.2022

Dr. Bahadur Varun Kumar

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Sameer Sachdeva, Advocate
for the petitioner.

Ms. Lavanya Paul, Deputy Advocate General, Punjab

MAHABIR SINGH SINDHU, J.

1. Present writ petition has been filed under Article 226 of the Constitution for quashing of the impugned order dated 29.07.2022 (P-14) (received on 03.08.2022), whereby No Objection Certificate (in short “NOC”) to attend the counselling for National Eligibility-cum-Entrance Test (Post Graduate)-2022 (in short “NEET-PG”) was declined to the petitioner.

2. Facts are not in dispute.

3. After completion of MBBS degree from Govt. Medical College, Amritsar, petitioner was appointed as a PCMS Doctor in the Department of Health & Family Welfare, Punjab on 02.06.2014 and posted as Medical Officer, Incharge, CHC, Makhu. Later on, vide order dated 12.05.2018, he was deputed for temporary duty at Civil Hospital, Ferozepur by Civil Surgeon, Ferozepur. In pursuance of above arrangement, petitioner joined at Civil Hospital, Ferozepur and while working as such, he was involved in an FIR No. 11, dated 21.05.2018, under Sections 7, 8 & 13 (2) of the

Prevention of Corruption Act, 1988 (for short “PC Act”), Police Station

Vigilance Bureau, Range Ferozepur, alongwith one Jagsir Singh (Class-IV employee of the Civil Hospital, Ferozepur), at the instance of one Karaj Singh S/o Bakhshish Singh, R/o Village Rukna Begu Kulgari, Tehsil & Distt. Ferozepur.

4. Also noteworthy that on 11.06.2018, petitioner was granted anticipatory bail by learned Additional Sessions Judge, Ferozepur.

5. On 01.07.2019, an application was moved by prosecution before Special Court for obtaining voice sample of petitioner. During the pendency of above request, petitioner moved an application on 02.08.2019 before Special Court with a submission that after conducting an enquiry by Sh. Shiv Kumar Verma, IG Vigilance Bureau, Punjab, he has been exonerated in the matter. In response to above, a reply was filed by prosecution with the averment that *“the office of undersigned received the letter from Joint Director, Crime, Vigilance Bureau, Punjab on 04.04.2019. The said letter bearing No. 20590/VB/S-9, dated 03.04.2019, vide which the directions are given to file challan keeping the accused-Dr. Bahadur Varun Kumar in Column No. 2. There is another accused Jagsir in the present case, as the investigation is yet pending, so the voice sampling of Dr. Bahadur Varun Kumar is not required at this stage.”* In view of the above stand taken by prosecution, their application for seeking voice sample was dismissed being infructuous by Special Court on 22.08.2019, observing as under:-

“ At the same, the application qua taking the voice sample of Dr. Varun Bahadur, has become infructuous; as per reply given by the State, wherein he has been exonerated in the inquiry by Sh. Shiv Kumar Verma, IG Vigilance Bureau, as such, the application qua

Dr. Varun Bahadur is hereby dismissed being infructuous. ”

6. In June 2022, petitioner appeared in NEET-PG under Roll No. 2266122257 (SC Category). He secured 395 marks out of 800 and his ranking is shown as 38667. On 10.06.2022, while posted at CHC Narot Jaimal Singh, District Pathankot, as Medical Officer, petitioner made a request to the Director, Health & Family Welfare, Punjab (for short “Director) (respondent No. 2) for issuance of NOC to attend the counselling being PCMS (in-service quota).

On the basis of above request, the Director vide communication dated 06.07.2022, solicited comments from Civil Suregon, Pathankot, who in turn, forwarded the same to Senior Medical Officer, Incharge, Narot Jaimal Singh, District Pathankot.

In response thereto, the Senior Medical Officer, vide communication dated 08.07.2022, while forwarding the case of petitioner to Civil Suregon, Pathankot, observed that he has completed 04 years & 04 month in Category-D (Difficult Rural Area), therefore, petitioner be awarded 30% incentive marks. Thereafter, Civil Suregon, Pathankot, vide letter dated 14.07.2022, forwarded the comments of Senior Medical Officer for further necessary action. Again the Director vide letter dated 22.07.2022, while agreeing with the Senior Medical Officer, recommended the case of petitioner to Secretary, Govt. of Punjab (respondent No. 1). Ultimately, the Secretary, while passing the impugned order dated 29.07.2022 (P-14) declined NOC to petitioner on the ground that his case is not covered under the Instructions dated 25.06.2019 (P-15).

8. Learned counsel for petitioner contended that after investigation of the criminal case, he was found innocent by IG, Vigilance Bureau, and as a result thereof, application of the prosecution for obtaining his voice sample was dismissed being infructuous; therefore, as on today, there is nothing adverse against him. Further contended that petitioner obtained 395/800 marks being a candidate in SC Category and he has completed more than 4 years & 5 months in Category-D (Difficult Rural Area), thus entitled for 30% incentive for admission to PG Course on the basis of NEET-2022. Again contended that withholding of NOC of petitioner on the basis of Govt. Instructions dated 25.06.2019 (P-15) is absolutely illegally, arbitrary, unconstitutional and as such impugned order dated 29.07.2022 (P-14) is not legally sustainable. Also submitted that in case impugned order is not set aside, petitioner shall suffer an irreparable loss and that would be detrimental to his career being a brilliant doctor.

9. In this case, notice of motion was issued on 09.08.2022 for 16.08.2022, but matter was adjourned on the request of learned State Counsel to 22.08.2022. Again on 22.08.2022, learned State Counsel requested adjournment for seeking instructions and was posted for today i.e. 23.08.2022.

10. No written response has been filed on behalf of respondent(s), but learned State Counsel produced record(s). She opposed the case of petitioner while submitting that criminal case is still pending for 17.11.2022 as challan in the matter is yet to be presented. She further submitted that enquiry by IG, Vigilance Bureau, Punjab, is of no consequence in view of

Punjab, in his reply dated 16.08.2019, specifically averred that petitioner be kept in Column No. 2 and his voice sample was not required at that stage; thus, it is wrong to contend that petitioner has been exonerated completely in the matter. She again submitted that in view of the Instructions dated 25.06.2019, 'good service record' is pre-requisite for seeking admission in Post Graduate Course under in-service quota; however, petitioner is an accused by name in a corruption case, therefore, he is not entitled for NOC to pursue the PG Course.

11. Heard learned counsel for the parties and perused records.

12. There is no dispute that an FIR (supra) was registered against the petitioner as well as one Jagsir Singh and challan in the matter is awaited for 17.11.2022. A cursory reading of the FIR reveals that allegations against petitioner are very serious and translated version of the same annexed with the paper-book is recapitulated as under:-

“ Stated that I am resident of above mentioned address and do agriculture work. Harjinder Singh who is son of my uncle Subeg Singh had a scuffle with the residents of our village namely Deepa, Satnam Singh s/o Jagga on 21.05.2018 at about 9.00 a.m. in the morning. During scuffle son of my uncle Harjinder Singh suffered injuries on his left leg and other body parts. Since I was at home, I took Harjinder Singh to the Civil Hospital Ferozepur, where I met Doctor Varun and one Class-IV employee Jagsir in the emergency ward. I informed them about the injuries received by my cousin, Doctor Varun told me to put the patient on the bed and bring the receipt first. Thereafter I got the registration done from the OPD in the name of Harjinder Singh and gave the same to the doctor, then doctor signalled me towards one employee Jagsir standing beside him and said that if you want good

result then talk to him. Then Jagsir hold me from my arm and took me to the adjoining room and said that if you what good result then you have to pay Rs. 20,000/- as bribe to me and doctor Varun. Upon my negotiation the above said Jagsir agreed for Rs. 15,000/- for giving treatment and issuing the MLR. I made excuse of not having the money at that time, then doctor Varun and Jagsir said that we will not issue MLR till you give the money. Then hurriedly I took 2 notes of Rs. 2000/- from my pocket and some notes of Rs. 200/- and handed over the sme to the Jagsir and told them to issue MLR and start the treatment of my cousin Harjinder Singh and I will bring the remaining amount. When I was going to my village Rukna Begu to take the remaining amount then my brother Jaswinder Singh, who was accompanying the patient Harjinder Singh told me over phone that Harjinder Singh is suffering from acute pain, you tell the doctor to give medicine to him. Upon which I called Jagsir class-IV employee and told him that Harjinder Singh is in pain, give some medicine to him. Jagsir said that you have given Rs. 7400/-. Bring the remaining amount after arranging the same. Then I told him to start the treatment and I am coming shortly. When I reached my village Rukna Begu, I met Mehtab Singh s/o Iqbal Singh and I narrated the whole incident of the civil hospital to him, he advised that these kind of corrupt doctors should be got caught through the vigilance department. Being agreed upon his above advise, I alongwith Mehtab Singh came in your office Vigilance Bureau Ferozepur and submit total Rs. 10,000/- 4 notes of Rs. 2000/- and 4 notes 500/- which I was to pay to Doctor Varun and Jagsir of civil hospital as per their demands as bribe. Legal action may be taken against them. Statement is written and the same is correct. ”

13. Although, the enquiry conducted by Sh. Shiv Kumar Verma, IG, Vigilance Bureau, Punjab, is not denied by learned State Counsel, but

not be appropriate for this Court to observe, as to under what circumstances the report has been prepared; or to whom it has been submitted. Moreover, when challan is yet to be filed before the competent Court, then it cannot be accepted that matter has been finally closed against the petitioner.

14. Be that as it may, as per Clause-2.1 of the Instructions dated 25.06.2019, 'good service record' is a condition precedent for consideration of the case of petitioner, and, which reads as under:-

“ 2. 30% Incentive Category.

2.1 Eligibility - As per Regulation 9 (IV) of Medical Council of India (MCI) under the Heading - “Selection of Post Graduate Students”, it has been provided as under:-

“ Provided that in determining the merit of candidates who are in service of government / public authority, weightage in the marks may be given by the Government/Competent Authority as an incentive at the rate of 10% of the marks obtained for each year of service in remote and/or difficult areas upto the maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test. The remote and difficult areas shall be as defined by State Government/Competent Authority from time to time.”

Accordingly, the candidate must fulfill the following conditions for incentive marks:-

- (a) Regular PCMS doctors who have completed 2 years of service in 'difficult rural area' (category 'D') or 3 years of service in 'other rural area' (category 'C') or appropriate combination (1:1.5) thereof would get 20% incentive marks.*
- (b) Regular PCMS doctors who have completed 3 years of service in 'difficult rural area (category 'D') or 4.5 years of service in 'other rural area' (category 'C') or appropriate combination (1:1.5) thereof would get 30% incentive marks.*

- (c) *Has cleared the probation period.*
- (d) *Good service record i.e. there is no charge sheet pending under Rule 8 or no challan has been submitted in judicial courts regarding any criminal case; and*
- (e) *Should have minimum of 6 years and 10 years of service left after completion of diploma or Post Graduate degree respectively.”*

15. Although, learned counsel for petitioner raised a plea that as per Clause (d) (*ibid*), 'good service record' means (i) that there should be no charge-sheet pending under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, (ii) no challan has been presented in judicial Court regarding criminal case; but that is not acceptable.

16. A bare perusal of Clause 2.1, reveals that for incentive marks, candidate “must” fulfill the condition of 'good service record'. So far as two contingencies, i.e. (i) pendency of charge-sheet and (ii) submission of challan, are concerned, these would be only for illustrations and by no stretch of imagination, same could be termed as restrictive. For example, if a doctor is having “doubtful integrity”, but there is neither any charge-sheet; nor challan presented against him/her in judicial Court, then it does not mean that he is having 'good service record'.

17. Moreover, in view of the averment made in para-4 of the reply filed by Deputy Superintendent of Police, Vigilance Bureau before Special Court, petitioner was to be kept in Column No. 2, and only “at that stage”, his voice sample was not required.

Thus, in such a scenario, it cannot be accepted that petitioner

has been given a clean chit in the criminal matter, finally; rather the ultimate

fate of the FIR will depend upon the conclusion of the trial, one way or the other. However, lest it may prejudice the case of petitioner, this Court will not delve on the issue any further, but allegations cannot be ignored altogether even at this stage also.

18. It would not be out of place to mention here that as per Clause 2.2 of above Instructions, a PCMS doctor, who seeks admission under 30% incentive category, would be entitled for full pay and allowances admissible from time to time during the entire period of PG Course, thus NOC cannot be granted in routine.

19. No doubt, petitioner has qualified the examination, while securing 389/800 marks, but NOC is to be granted subject to the fulfillment of terms and conditions stipulated under the aforesaid Instructions, which in the opinion of this Court, he is not fulfilling.

In view of the facts and circumstances discussed hereinabove, this Court does not find any illegality, worth interference, while exercising power of judicial review under Article 226 of the Constitution against the impugned order. As a result thereof, there is no option except to **dismiss** the petition.

20. Ordered accordingly.

21. Before parting with this order, it is necessary to observe that after passing of the order dated 22.08.2019, by learned Special Judge, thereby dismissing the application of prosecution for seeking voice sample “as infructuous”, matter has been adjourned on 38 occasions, but till date, no challan has been presented for the reasons best known to the prosecution.

In view of the above, let a copy of this order be sent to Principal Secretary, Home, Govt. of Punjab, to look into the matter for undue delay in presentation of challan and report in this regard be submitted to the Registry of this Court within three months.

August 23, 2022

'Mamta / dk kamra'

**(MAHABIR SINGH SINDHU)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>