

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

LPA-268-2022

Date of decision : 07.12.2023

Government of Haryana and others

.....Appellants

Versus

Dr. Sagar Khera

....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Deepak Balyan, Addl. Advocate General, Haryana.

Dr. Sagar Khera – respondent in person.

RITU BAHRI, ACTING CHIEF JUSTICE (Oral)

1. This intra-court appeal has been filed by the appellants – State against the judgment dated 02.12.2021 passed by the learned Single Judge, whereby the writ petition (CWP No. 27781 of 2018) filed by Dr. Sagar Khera (respondent herein) was allowed.
2. The respondent has referred to a Division Bench judgment of this Court in **State of Haryana and others Vs. Dr. Sudhir, LPA-1090-2019, decided on 01.12.2021** and another decision of the Single Bench of this Court in **Himanshu Moudgil Vs. State of Haryana and others, CWP-12194-2020, decided on 20.04.2022.** In both these cases, the benefit of salary has been given to those Doctors, who had been working

in the Labour Department and had no opportunity to serve in the rural areas.

3. In **Dr. Sudhir's case (supra)**, the appellant was posted in ESI dispensary at Daultabad, which was functioning from ESI dispensary at Gurugram. Similarly, the dispensaries at Manesar, Binola and Kasan were also functioning from dispensary at Gurugram. However, there was no ESI dispensary functioning in the rural area. On this account, Dr. Sudhir had not been granted NOC to pursue his Post Graduation course. On account of lack of infrastructure in the dispensary at Daultabad, Dr. Sudhir was working from the dispensary at Gurugram, and this fact could not be taken against him to say that he had not worked in a rural dispensary. The writ petition filed by Dr. Sudhir was allowed. While disposing of the LPA, the Division Bench gave directions that after completing his Post-Graduation course, Dr. Sudhir would serve the State in a rural area for a period of two years. A further direction was given that he will refund the HRA, which was received by him during the period of his posting at Daultabad, while stationed at Gurugram, after adjusting the rural area allowance, which was to be paid to him. The judgment in **Dr. Sudhir's case (supra)** has attained finality, as the State has not challenged the same.

4. In the same backdrop, in **Himanshu Moudgil's case (supra)**, during the pendency of the writ petition, the State passed an administrative order dated 14.03.2022 and claim of the petitioner qua arrears of salary was accepted. In that case also, salary of the petitioner had been withheld by the State on account of the fact that he had not worked in rural dispensary. This order has also attained finality.

5. Learned State counsel has argued that the Policy dated 19.03.2018, under which the respondent was given NOC without pay, has not been challenged by the respondent. By way of an affidavit dated 06.03.2019 filed in the writ petition, the Labour Department gave a list of rural dispensaries to show that there are rural dispensaries in the Department, but despite that the respondent never applied for posting in any of these rural dispensaries. Learned State counsel has referred to a decision of the Supreme Court in **State of Orissa Vs. Mamata Mohanty, 2011 (3) SCC 436**, to contend that Article 14 of the Constitution of India is not meant to perpetuate illegality and it does not envisage negative equality. Even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the respondent in the present case to get the same relief. He further submits that as per the Policy dated 19.03.2018, it is mandatory that the in-service doctor should serve in the rural areas for few years before NOC is granted to him for doing Post Graduation course and this condition cannot be diluted only on the ground that two persons have already been granted this benefit.

6. The arguments raised by learned State counsel are liable to be rejected keeping in view the fact that no opportunity was given to the respondent to go and serve in the rural areas and he has continuously served in the Labour Department. The judgments rendered in **Dr. Sudhir's case** (supra) and **Himanshu Moudgil's case** (supra), relied upon by the respondent, have been complied with and the payments to the petitioner/appellant therein have already been made. The impugned

judgment in this case is also stated to have been complied with and payment in terms thereof has been made to the respondent.

7. The judgment in **Mamata Mohanty's case** (supra) will not be applicable in the present case, as during the pendency of the writ petition, on 17.01.2019, learned State counsel, on instructions from Mr. Pawan Kumar, Assistant from the Department, had submitted that no Doctor from the Labour Department working under the ESI Scheme has ever been sent to the rural duty in the Health Department. The respondent, while working in the Labour Department, was not expected to stop going to the place, where he was posted, and insist that he should be transferred in a rural dispensary. It is also not the case of the appellants that the respondent had been offered to work in a rural dispensary. Hence, it is not a case where the respondent is seeking benefit on the basis of any mistake or wrong order passed by the authorities earlier. The learned Single Judge has rightly observed that on the one hand, the appellants have granted NOC to the respondent to pursue the Post Graduation course without payment of salary and on the other hand, they are insisting that after completing his Post Graduation course, the respondent would sign a bond for a period of five years during which he cannot quit service. There was no evidence produced by the appellants to show that any circular was issued by the Labour Department for giving option to the respondent to work in an ESI dispensary in rural area. In this background, the writ petition has been rightly allowed by the learned Single Judge directing the appellants to pay salary to the respondent with effect from the date when he was relieved from his parent department till its actual payment along with interest at the rate of 6% per annum.

8. In view of the above, we do not find any illegality or infirmity in the impugned judgment passed by the learned Single Judge.

9. Appeal is, accordingly, dismissed.

(RITU BAHRI)
ACTING CHIEF JUSTICE

(AMAN CHAUDHARY)
JUDGE

December 07, 2023
ashok/ndj

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