

RA-CW-105-2021
in CWP-23838-2019 **1** **2023:PHHC:129059**

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RA-CW-105-2021 (O&M)
in CWP-23838-2019
Date of decision: 29.09.2023
Reserved on: 19.07.2023

Dr. Yogesh Kumar Vashisht

..Petitioner

Versus

State of Haryana and others

.Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Rajiv Atma Ram, Sr. Advocate with
 Ms. Sanah Sahni, Advocate for the review applicant-
 petitioner

Ms. Vibha Tiwari, AAG, Haryana

Mr. Surinder Gaur, Advocate for respondent no.3

Mr. Keshav Pratap Singh, Advocate for respondent no.4

ANIL KSHETARPAL, J

1. Through this review application, the petitioner prays for recalling/reviewing the judgment dated 23.02.2021.

2. At the outset, it is important to note that the aforesaid judgment appears to have been signed without proofreading and therefore there are certain inadvertent errors that are being corrected.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook. The

review of the judgment has been sought primarily on the following three grounds:-

i) Subsequent instructions dated 08.03.2018 (Annexure A-3), have been concealed by the State of Haryana.

ii) Vide instructions dated 27.03.2018, the aforesaid decision has been reiterated.

iii) Similar no objection certificates have been given to Dr. Gaurav Kamboj and Dr. Ramanika Aggarwal.

4. While filing the reply, the respondents have contended that the instructions dated 08.03.2018, were not applicable to the various medical colleges located in the State of Haryana as per the instructions dated 27.04.2018, including Kalpana Chawla Government Medical College, Karnal, BPS Government College for Women, Khanpur Kalan, Sonapat, Shaheed Hasan Khan Mewati, Government Medical College, Nuh.

5. With regard to the allegation of hostile discrimination, it may be noted that the Government has stated that Dr. Gaurav Kamboj had applied for the post of the Assistant Professor in Community Medicine at Kalpana Chawla Government Medical College, Karnal. He was granted relaxation in view of the requirement of the faculty at the Kalpana Chawla Government Medical College, Karnal. Similarly, Dr. Ramanika Aggarwal had, in

fact, submitted her resignation letter and she deposited Rs.4,47,133/- in lieu of the period of notice as she resigned three months earlier.

6. The learned counsel representing the petitioner has also filed an application claiming that by now the period of 5 years is over and therefore, the petitioner, in any case, is entitled to no objection certificate by the competent authority.

7. It may be noted here that while deciding the writ petition, the Court has considered the following question:-

“Whether the State Government/employer can restrict the right of a Government servant to apply for another post and if so, to what extent?”

8. This Court relied upon an unreported Five Judges Bench judgment of the Supreme Court in **Birender Kumar Nigam vs. Union of India** (Writ Petition Nos. 220 to 222 of 1962 decided on 13.03.1964), which has already been extracted in the judgment.

9. It is evident that the instructions issued on 08.03.2018, were clarified on 27.04.2018, and the Government agreed with the proposal of the Department and excluded Group A, B, C and D employees, of the various Government colleges, located in the State from the policy of non-requirement of no objection certificate, in accordance with the policy instructions dated 08.03.2018. Thus, within a period of one month, the instructions dated 08.03.2018

were not extended to the employees of the Medical College. The aforesaid decision of the Government is extracted as under:-

“2. Government agrees with the proposal of Department and exempted all Group ‘A’, ‘B’, ‘C’ and ‘D’ employees of Institutions i.e Medical Colleges, namely; Kalpana Chawla Government Medical College, Karnal; Bhagat Phool Singh Government Medical College for Women, Khanpur Kalan, Sonapat and Shaheed Hasan Khan Mewati Government Medical College, Nalhar, Nuh, from the policy of non-requirement of ‘No Objection Certificate’ from the Department in accordance with Government policy issued vide No.12/01/2018-2GS-I, dated 08.03.2018 while applying for posts outside the Institution to which they belong.”

10. With reference to the argument of the learned senior counsel representing the petitioner on the issue of hostile discrimination, it may be noted that the State has already explained that Dr. Gaurav Kamboj was granted relaxation in the peculiar facts and circumstances of the case, whereas Dr Ramanika Aggarwal had resigned earlier and was not granted any relaxation.

11. While considering a review application, the Court is not obligated to reappreciate all the facts comprehensively. In the absence of a patent error, which goes to the root of the matter, the court is not expected to exercise its power of review. The learned

RA-CW-105-2021

in CWP-23838-2019

5

2023:PHHC:129059

senior counsel representing the petitioner has relied upon the certain judgments in which it has been laid down that even in the policy of relaxation, there cannot be any discrimination. However, in the present case, the relaxation has been made in different circumstances. Dr. Gaurav Kamboj was working in the field of community medicine whereas the petitioner herein is working in the Department of Forensic Medicine.

12. Keeping in view the aforesaid facts and discussion, no ground to review is made out.

13. Hence, dismissed.

14. All the pending miscellaneous applications, if any, are also disposed of.

29.09.2023

rekha

(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No