

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

CWP-19691-2020 (O&M)
Date of decision : 20.10.2023

DR. AMIT KUMAR

...Petitioner

Versus

DIRECTOR, POST GRADUATE INSTITUTE OF
MEDICAL EDUCATION AND RESEARCH AND
OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Suvir Sidhu, Advocate
along with petitioner-in-person.

Mr. Amit Jhanji, Senior Advocate assisted by
Ms. Praneet Kaur, Advocate
and Mr. Paramvir Singh Doon, Advocate
for respondents-PGIMER.

HARSH BUNGER, J.

1. Petitioner (Dr. Amit Kumar) has filed the instant writ petition, seeking a writ in the nature of *mandamus*, for directing the respondent-Institute (PGIMER, Chandigarh) to allow him to join as Junior Resident, to continue and complete his M.D. Internal Medicine Course in Department of Internal Medicine.

A further prayer has been made for issuance of a writ in the nature of *certiorari* for quashing the letters dated 27.08.2019 (Annexure P-9), 29.10.2019 (Annexure P-10), 14.02.2020 (Annexure P-11) and 02.11.2020 (Annexure P-15); whereby, the petitioner has not been allowed to join as a Junior Resident and to continue and complete his M.D. Internal Medicine Course, in the respondent-Institute and instead demanding a penalty of Rs.5,00,000/-. Another prayer for grant of damages has also been made.

2. Briefly, the petitioner joined the respondent-Institute (PGIMER, Chandigarh) on 06.01.2018 as a Junior Resident in the Department of Internal Medicine, in the Batch of January, 2018 to December, 2020. It is the case of the petitioner that at the time of joining, his original academic certificates were taken by the respondent-Institute and are still with them.

3. It is the case of the petitioner that after undergoing the course for about one year, developed some medical problems and he had to undergo treatment for the same, for which, there was a brief absence and he wrote to the respondent-Institute for grant of leave from 02.01.2019 to 19.02.2019 along with medical certificate and after getting well, he went for joining in February, 2019; however, he was told that he could join only after being declared fit by the Medical Board. As per the petitioner, the Medical Board was constituted vide order dated 14.03.2019 by the respondent-Institute and thus, he appeared before the Board and vide letter dated 14.06.2019 (Annexure P-5), he was informed that he has been found fit and was asked to join the department by 19.06.2019. It is submitted by the petitioner that since his marriage was scheduled to take place on 08.07.2019; accordingly, petitioner vide email dated 19.06.2019, requested for extension of leave upto 19.07.2019 for his marriage ceremony and it is stated that the respondent-Institute extended the leave of the petitioner from 19.06.2019 upto 19.07.2019 vide letter dated 18.07.2019 (Annexure P-6).

4. As per the petitioner, he could not join the respondent-Institute on 19.07.2019 due to heavy floods in Bihar; accordingly, he informed the Institute vide *email* dated 19.07.2019 to consider the extension for five days and requested for joining on 24.07.2019 and further stated that if he does not join by 24.07.2019 then the respondent-Institute (PGIMER) can start the

proceedings as per its rules. Petitioner claims that the request for grant of extension in leave from 19.07.2019 to 23.07.2019, did not get any response and on 24.07.2019, when he went to the Institute for joining, he waited for the whole day but he was not allowed to join the M.D. Course in the Internal Medicine. The petitioner claims that he used to daily visit the Institute and requested to join the M.D. Course, however, the respondent-Institute did not permit him to do so. The petitioner submits that he met every concerned official with a request for joining the course, but no heed was paid to the same and rather, he was pressurized to resign. Petitioner states that owing to his financial position, he became severely depressed and developed suicidal thoughts. However, vide letter dated 31.07.2019 (Annexure P-8), the petitioner resigned from the internal medicine.

5. It appears that vide letter dated 27.08.2019 (Annexure P-9), the respondent-Institute informed the petitioner that the competent authority has in principle agreed to accept the resignation of the petitioner and since the petitioner had resigned after one year and within two years of his joining; as such, he was liable to pay penalized amount of Rs.5,00,000/-. Said letter dated 27.08.2019 reads as under :-

“This is with reference to your letter dated 31.07.2019 vide which the resignation from the post of Junior Resident, Internal Medicine has been submitted by you with the request for waiving of Bond Penalty. In this regard it is to inform you that the competent authority has in principle agreed to accept your resignation as per rule. As per rule, the candidate who join MD/MS course and leave the course midway will be penalized as per period at which resignation is tendered. You have tendered the resignation after one year and within two years of joining

and as such you are liable to pay penalized amount of Rs.5,00,000/-.

You are therefore, requested to deposit the amount of Rs.5,00,000/- as penalized amount payable by you for tendering the resignation. The resignation will be accepted when the said amount of Rs.5,00,000/- will be paid by you.”

6. The petitioner claims that he received various letters calling upon him to deposit Rs.5,00,000/- so that his resignation is accepted and in the meantime, he was requesting the Institute to allow him to join and complete his M.D. Course but all in vain. Petitioner states that from March-2020, on account of lockdown due to Covid-19, the petitioner was forced to stay at his home city HazariBagh, Jharkhand. It is submitted that since the resignation of the petitioner was not accepted and when the normal life was restored, he again went to the Institute and requested for joining, however, on 12.10.2020, the Dean Academics of PGIMER orally informed the petitioner that he will not allow him to join. As per petitioner, he again wrote a letter dated 23.10.2020 (Annexure P-13) showing his intention to complete his course and also expressing how he was compelled to resign. Thereafter, the petitioner is stated to have sent a legal notice dated 26.10.2020 (Annexure P-14). As per the petitioner, the respondent-Institute sent a letter dated 02.11.2020 stating that the acceptance of resignation of the petitioner has been conveyed to him vide letter dated 27.08.2019 (Annexure P-9) and the original certificates were lying with the Institute, which would be handed over to him only on his depositing penalty amount of Rs.5,00,000/-.

7. Petitioner claims that a perusal of the letter issued by the Institute would manifest that nowhere his resignation has been accepted and

it is clear from the said letter that the resignation will be accepted when the amount of Rs.5,00,000/- is deposited by him.

8. In the backdrop of the afore-stated facts and circumstances, the petitioner claims that a direction be issued to the respondent-Institute to allow him to join as Junior Resident to complete his M.D. Internal Medicine Course by quashing the letters dated 27.08.2019 (Annexure P-9), 29.10.2019 (Annexure P-10), 14.02.2020 (Annexure P-11) and 02.11.2020 (Annexure P-15)

9. Petitioner claims that on one hand, he has been debarred from joining and continuing his M.D. course in internal medicine and on the other hand, he is being asked to deposit Rs.5,00,000/- for leaving the course in between, although, his resignation has not been accepted. Petitioner claims that the aforesaid acts of the respondent-Institute are wholly arbitrary and unwarranted and the petitioner has been debarred from joining and continuing his M.D. Course in internal medicine, only for a mere delay of five days and that too, after timely intimation by him to the respondent-Institute vide *email* dated 19.07.2019 (Annexure P-7).

10. On the other hand, Mr. Amit Jhanji, learned Senior Advocate appearing for the respondent-Institute, while referring to the written statement, filed on behalf of the respondents, submits that since the resignation of the petitioner has already been accepted by the respondent-Institute; accordingly, the acceptance of resignation cannot be undone. It is further submitted that the M.D. (Internal Medicine) Course for the Session 2018-20, ended in December-2020 and it was impossible to admit the petitioner to a course for the Session wherein he had taken admission.

Mr. Jhanji, learned senior counsel further submits that the present writ

petition is liable to be dismissed on the ground of delay and laches as since 31.07.2019 upto 11.10.2020, the petitioner has slept over the matter and subsequently, on 12.10.2020 (after a period of more than one year), he had requested the Institute to grant permission to rejoin the course. It is submitted that the said request could not be considered as the resignation of the petitioner had already been accepted. It is further stated that the petitioner was very well aware about the condition of payment of penalty upon resignation from the course, which was clearly mentioned in the prospectus/brochure along with the agreement entered into between the respondent-Institute and the petitioner. It is submitted that the petitioner had executed an agreement with the Institute to serve the PGIMER, Chandigarh for a period of three years, failing which, he was liable to pay penalty amount to Rs.5,00,000/-. It would be apposite to refer to the relevant extract of the prospectus as under :-

“AGREEMENT BONDS/SURITIES/CONTRACT

The Junior Residents (MD/MS) will be on contract service for a period of three years and will be required to execute an agreement and undertaking on non-judicial stamp paper of minimum Rs.5/- value. Any candidate who joins MD/MS course and leaves the course midway, will be penalized in following manner :

<i>Period at which resignation is tendered/accepted</i>	<i>Proposed Penalty in Rs.</i>
<i>Within one month of joining</i>	<i>Rs.1,00,00/-</i>
<i>After one month and within six months of Joining</i>	
<i>After six months and within one year of joining</i>	<i>Rs.5,00,000/-</i>
<i>After one year and within two years of joining</i>	
<i>After two years of session</i>	
<i>The salary of the month in which his/her resignation from the PG seat become effective, shall also stand forfeited.</i>	

11. Learned senior counsel for the respondent has further referred to various letters issued by the Professor and Head, Department of Internal Medicine to the Dean, PGIMER, Chandigarh, to contend that the petitioner had joined the department on 06.01.2018 and till 21.02.2019, he had already availed 206 leaves. Mr. Jhanji, learned senior counsel has also referred to Annexure R-26, which is a letter dated 05.03.2019 written by Professor and Head, Department of Internal Medicine to the Dean, PGIMER, Chandigarh.

A perusal of said letter would further indicate that it was clearly written that it has been brought to the notice of the Head of the Department that the petitioner had joined Indian Railways Service and accordingly, it was stated that he should be asked to bring NOC/proper sanctioned leave to join in the department. Mr. Jhanji, learned senior counsel submits that since the very beginning, the petitioner had no intention to complete the course and rather, it appears that he is already in service with the Western Railways as is apparent from one of his communication dated 26.06.2018 with Dean, PGIMER, Chandigarh (Annexure R-10).

Learned senior counsel has further referred to Annexure R-2, which is an agreement executed between the petitioner and the respondent-Institute wherein, the reference was made to Clauses 4, 5 and 6 thereof, to contend that in case, the Junior Resident (petitioner) resigns from his/her appointment without completing the Postgraduate course to which he/she has been admitted by the Institute, defaulter those leave the said course after joining shall be liable to pay a penalty. Paras 4, 5 and 6 of the said clause reads as under :-

“4. The Junior Resident shall devote his/her whole time to the duties of the said service and shall not engage, directly or indirectly in any trade, business,

occupation or profession (including any private practice) on his own account and shall not (except in case of accident or sickness certified by competent medical authority) absent himself/herself from his/her said duties without having first obtained the permission from the Director or his authorized officers, Unauthorized absence from duty shall result in extension of period of training by a period equal to the duration of absence and cause loss of a term if it exceeds 30 days during the three years term.

*5. The Junior Resident who are enrolled at this institute for pursuing their PG course, violate the conditions of the prospectus, shall have to re-pay all the amount of emoluments which they get during the period of their present residency. If, during verification at a later stage, it s found that any of the candidate had misconduct by furnishing wrong information and violated any of the rules & regulations as mentioned in the prospectus, the defaulting candidate will have to pay penalty of **three Lakh** and his/her resignation from the present MD/MS course will be cancelled.*

6. The Junior Resident shall not except as provided in this agreement resign his/her appointment without completing the Postgraduate course to which he/she has been admitted by the Institute. Defaulter those leave the said course after joining shall be liable to pay a penalty in following manner :-

<i>Period at which resignation is tendered/accepted</i>	<i>Penalty in Rs.</i>
<i>Within one month of joining</i>	<i>Rs.1,00,000/-</i>
<i>Within one month and within six months of joining</i>	
<i>After six months and within one year of joining</i>	<i>Rs.5,00,000/-</i>
<i>After one year and within two years of joining</i>	
<i>After two years of session</i>	
<i>The salary for the month in which his/her resignation from the PG seat become effective, shall also stand forfeited.</i>	

Two sureties on non judicial stamp paper of Rs.25.00 perfectly from the local residents are required to be submitted at the time of admission. The candidate who fails to submit the same shall not be allowed to join the course. Sureties from Junior/Senior Residents are not acceptable. Formats for the same will be provided by the office at the time of Interview/Counseling.”

12. On the basis of the aforesaid submissions, Mr. Jhanji, learned senior counsel has argued that since the petitioner had not completed his course, accordingly, in terms of the agreement and also the clear provisions contained in the prospectus, he is liable to deposit the amount of Rs.5,00,000/-. Accordingly, prayer for dismissal of the writ petition has been made.

13. I have heard learned counsel for the respective parties and perused the paper book with their able assistance.

14. A perusal of the afore-stated facts would clearly indicate that the petitioner had not completed his course. He claims that he had availed leave for his marriage and thereafter, he could not join on time on account of floods in his native place and thereafter, when he submitted his joining, he was not permitted to join. Petitioner further claims that he was depressed by the circumstances and accordingly, he tendered his resignation. On the other hand, learned senior counsel appearing for the respondent-Institute had referred to various Annexures, indicating that the petitioner had availed of 206 leaves and also that the resignation tendered by him has been accepted in principle. However, since the petitioner was leaving the course mid-way; accordingly, in terms of the prospectus and the agreement executed by the petitioner with respondent-Institute, he was liable to pay an amount of Rs.5,00,000/-.

15. The issue with regard to the payment of penalty amount in terms of the agreement/prospectus and for that matter on the basis of a bond, is no more *res integra* as the same has been decided by the Hon'ble Supreme Court in *Association of Medical Superspeciality Aspirants and Residents and others v. Union of India and others (2019) 8 SCC 607*, wherein it has been held that all doctors who have executed compulsory bonds shall be bound by the conditions contained therein. Relevant paras from the judgment are as under :-

"35. The submission of Mr. Huzefa Ahmadi, learned Senior Counsel for the Appellants is that the conditions of the bond per se amount to 'forced labour' and thus are violative of Article 23 (1) of the Constitution. Mr. Dwivedi expostulated the said submission by referring to Article 23 (2) which confers power on the State to impose compulsory service for public purpose. Reliance was placed upon the Constituent Assembly Debates by Mr. Dwivedi explaining the scope of compulsory employment for public purpose under Article 23 (2) of the Constitution of India. The Appellants who are required to work for a short period on a decent stipend cannot complain that they are made to perform 'forced labour', especially after the Appellants have taken an informed decision to avail the benefits of admission in government medical colleges and received subsidized education. By no means, the service rendered by the Appellants in Government hospitals would fall under the expression of 'forced labour'.

39. The argument advanced on behalf of the Appellants that compulsory bonds placed a restraint on their profession and thus, would be contrary to section 27 of the Indian Contract Act, 1872. The High Court of

*Calcutta repelled this submission by holding that the compulsory bond does not amount to any restraint on the professional activity of the Appellants. The High Court observed that the Appellants are offered the job of Medical Officer in the State of West Bengal and that the covenant in the compulsory bond operates only during the period of such employment. Relying upon the dictum of Lord Morris in **Esso Petroleum Co. Ltd. v. Harper's Garage (Stourport) Ltd.**, that :-*

"if A made a contract under which he willingly agreed to serve B on reasonable terms for a few years and to give his whole working time to B, it would be surprising indeed, if it were sought to describe the contract as being in restraint of trade; in fact, such a contract would very likely be for the advancement of trade."

The High Court concluded that a contract entered into by Appellants to serve the government for a few years under reasonable terms cannot be described as one in restraint of trade. We are in agreement with the findings recorded by the High Court of Calcutta. Therefore, we are of the considered opinion that the conditions of compulsory bonds for admission to post-graduate and super-Speciality courses in government medical colleges are not in violation of section 27 of the Indian Contract Act, 1872.

40. The upshot of the above discussion is that the Writ Petitions and the Appeals deserve to be dismissed. Consequently, all the Doctors who have executed compulsory bonds shall be bound by the conditions contained therein".

16. In view of the afore-stated legal position and also considering the peculiar facts and circumstances of the instant case, even if it is to be taken that the resignation tendered by the petitioner has not been accepted,

the fact remains that the petitioner did not complete his course inasmuch as, he had availed more than 200 leaves. I also agree with the submissions made by Mr. Jhanji, learned senior counsel representing the Institute that the course for which the petitioner was admitted, was for the Session 2018-2020 and it is not possible to make the petitioner join at this stage to complete the said course. It also appears that the petitioner is working with the Indian Railways and by way of filing the instant writ petition, he is only seeking exemption from the payment of penalty amount of Rs.5,00,000/-. Once the petitioner himself has executed an agreement in terms of the prospectus with the respondent-Institute that he will not resign his/her appointment without completing the post graduate course to which he/she has been admitted by the Institute and those who leave the said course after joining, shall be liable to pay a penalty as per chart mentioned therein, accordingly the petitioner would be bound by the same. In this case, since the petitioner had not completed his course and took more than 200 leaves and further sought to leave the course after one year and within two years, accordingly, the petitioner would be liable to pay Rs.5,00,000/- to respondent-Institute, moreso when the petitioner has not disputed the terms of the agreement/bond and its applicability in any manner whatsoever. Moreso, it calls to reason that such like course i.e. M.D. (Internal Medicine) or similar other courses are vacancy based/seat based and the same is occupied (as by the petitioner in this case) after going through entire process of admission for a specified course. The withdrawal therefrom would entail blocking of the source/vacancy on which a suitable candidate is to acquire qualification. It is in these circumstances that such binding clauses are incorporated in the

Agreement/bond to secure the institution and the government resources utilized therein as also to balance the interest of the candidate.

17. In the afore-mentioned circumstances, I do not find any merit in the instant writ petition and the same is accordingly dismissed.

18. All pending application/s, if any, shall also stand closed.

October 20, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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