

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

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CWP-23892-2021 (O&M)

Date of Decision:17.04.2023

Dr. Abhinandan Mukhopadhyay

.....Petitioner

versus

Baba Farid University of Health Sciences and anr.

.....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Prashant Kumar, Advocate for
Mr. Vipul Joshi, Advocate for the petitioner.

Mr. Nitin Kaushal, Advocate for respondent No.1.

PANKAJ JAIN J.(Oral)

Petitioner has filed the instant writ petition seeking issuance of a writ in the nature of *certiorari* or any other appropriate writ, order or direction for quashing order dated 13.07.2021 (Annexure P-14) issued by respondent No.1. Further prayer is for issuance of a writ in the nature of mandamus directing the respondents to issue relieving certificate and certificate of experience in favour of the petitioner for the period he worked with respondent No.2 as an Assistant Professor (Urology), Department of Surgery and for settling his dues and to release the arrears along with interest @ 12 per cent per annum from the date the same became payable to the petitioner till the date of actual realization.

The petitioner was appointed as Assistant Professor (Urology) vide letter dated 03.01.2017 (Annexure P-1) and thereafter the same was extended from 16.01.2018 to 15.01.2019, however, he was freshly appointed vide appointment letter dated 11.07.2018 again as Assistant Professor (Urology). The

same has been placed as Annexure P-3. Before the petitioner could complete probation period, he tendered one month notice and resigned on dated 10.05.2019 vide Annexure P-6. The competent authority ordered that he can be relieved after his substitute is selected. However, the dues of the petitioner under relieving letter/experience certificate were not being released owing to the same the petitioner was constrained to approach this Court by filing CWP No.9798 of 2021 which was disposed of vide order dated 18.05.2021 in the following terms:-

“The writ petition is disposed of with a direction to Registrar of respondent No.1 to decide the pending legal notice dated 22.03.2021 earliest and in any case not later than eight weeks from the date of receipt of the certified copy of this order in accordance with law and keeping in view justice and equity.”

Pursuant to the aforesaid directions, impugned order dated 13.07.2021 has been passed, whereby the claim of the petitioner has been rejected as under:-

“Dr. Abhinandan Mukhopadhyay was working as Assistant Professor (Urology), Deptt. Of Surgery, Guru Gobind Singh Medical College & Hospital, Faridkot was appointed as Assistant Professor (Urology) on adhoc basis from 16 January 2017 till 15 January 2018 and thereafter terms was extended w.e.f.16.01.18 to 15.01.19. He was appointed as Asstt. Professor (Urology) on regular basis vide letter No.08-BFUHS/Estt1-REC-18/14832 dated 11 July 2018 against advt. No.01/18. He joined University service on 20.07.2018. As per clause No.2 of his appointment letter, which is reproduced as under:-

“On probation for a period of Three years.

The period of probation can be extended in accordance with rules of the University. During the period of probation, your service shall be liable to termination giving one month notice in writing on either side and three months notice to the University after clearance of probation period.”

He tendered/gave one month notice of resignation on 10.05.19. His case of one month notice of resignation was placed before the Competent Authority. The competent authority had ordered that he can be relieved after the substitute is selected. The same was conveyed to the Principal, Guru Gobind Singh Medical College & Hospital, Faridkot vide letter No.673 dated 28.05.19 to inform him accordingly.

Again letter was received from Principal vide No.14075 dated 24.06.19 i.r.o Dr.Abhinandan Mukhopadhyay, regarding absence from duty was placed’ before the competent authority. The competent authority had ordered that “he has left without information therefore the experience certificate and salary be withheld.”

Then a letter was received from Dr. Abhinandan Mukhopadhyay duly forwarded by Principal, Guru Gobind Singh Medical College & Hospital, Faridkot vide Endst.No.14574 dated 01.07.19 in which it was stated that he had already worked for more than one month after his notice period of resignation. He further submitted that due to unavoidable circumstances (his father’s illness),

he was unable to continue further and he has requested to issue him relieving letter from 11.06.19 as he resigned.

It has come to notice that he is working at AIIMS, Bathinda on Adhoc basis. He is permanent resident of West Bengal and his corresponding address is of Gurgaon. The distance from his both workplace i.e. (GGSMC&H, Faridkot and AIIMS, Bathinda) and his hometown is almost similar. He left regular service at Guru Gobind Singh Medical College & Hospital, Faridkot and applied at AIIMS, Bathinda without permission and joined adhoc service at All India Institute of Medical Sciences, Bathinda which is not justified.

As he did not abide by the orders of Competent Authority, was absent from the duty and left the service without intimation and patients had to suffer as it affected the patient care. Hence the prayer of the petitioner to release his salary for remaining period, security amount and experience certificate cannot be acceded to as he did not take care of the orders of the competent authority.”

Counsel for the petitioner submits that once the petitioner had put his papers that too purely in consonance with the terms of the appointment as contained in the communication dated 11.07.2018, there was no reason for the respondents to withhold his monitory benefits, experience certificate and relieving order. The monitory benefits having been wrongly withheld by the respondents, the petitioner would be entitled to be compensated by paying interest for the wrongly withheld amount.

Per contra counsel for the respondents submits that it is a case where the petitioner has left the services within intimation and acceptance of notice and thus he was not entitled for the relief as the consequential benefits have been rightly with-held

I have heard counsel for the parties and have gone through the records of the case.

Admittedly, the service conditions of the petitioner were governed by appointment letter dated 11.07.2018 which clearly and unambiguously provides as under:-

Subject:- Appointment as Assistant Professor (Urology),

Reference to your application against Advt.No.01/18 for the above mentioned post, on the basis of the recommendations of the selection committee and approval of the Board of Management, the Vice-Chancellor is pleased to appoint you as Assistant Professor in the Department of Surgery at GGS Medical College and Hospital, Faridkot, on the following terms and conditions:-

1.	<i>Post</i>	<i>Assistant Professor (Urology)</i>
2.	<i>Period</i>	<i>On probation for a period of three years. The period of probation can be extended in accordance with rules of the University. During the period of probation, your services shall be liable to termination giving one month notice in writing on either side and three months notice to the University after clearance of probation period.</i>
3.	<i>Pay scale</i>	<i>Rs. 37400-67000-Grade Pay Rs.8600/- with initial start. Other allowances as per Punjab Government</i>
4.	<i>Other</i>	<i>In all matters of service in the University, you</i>

	<i>conditions</i>	<i>shall be governed by the University rules, orders & instructions.</i>
5.	<i>Duties</i>	<i>As prescribed for the post and as assigned to you by the Principal, GGS Medical College & Hospital, Faridkot</i>
6.	<i>You are not allowed to do or assist in any kind of private practice any where as all of your time is at the disposal of the institution.</i>	
7.	<i>Your working hours will be determined by the Principal/Head of the Department as per the needs of the institution.</i>	
8.	<i>You are required to submit certificate of registration with Punjab Medical Council.</i>	
9.	<i>You will have to qualify matriculation standard Punjabi or equivalent examination within six months from the date of joining if not passed earlier.</i>	

If this offer of appointment is acceptable to you, you are required to appear before the Medical Board constituted by the Principal, GGS Medical College & Hospital, Faridkot and if declared fit you should submit your joining report to the Principal, GGS Medical College & Hospital, Faridkot within 15 days from the date of issue of this letter failing which this appointment letter will be treated as cancelled.”

Admittedly, the petitioner has not completed his probation thus as per the condition as contained in column No.2 (supra) contract of service was terminable by giving one month notice in writing on either side. Such notice is not subject to acceptance as being claimed now before this Court.

Admittedly, resignation letter dated 10.05.2019 (Annexure P-6) was received by the respondents thus the petitioner was well within his rights arising

out of the contract of service to get relieved on completion of one month from 10.05.2019 i.e. after 09.06.2019.

In view of the above, the reasoning recorded in the impugned order 13.07.2021 (Annexure P-14) and the stand taken by the respondents here before this Court is in the teeth of the terms and conditions of the contract of service and thus cannot be sustained.

Resultantly, the impugned order 13.07.2021 (Annexure P-14) is set aside. Respondents are directed to issue relieving order/experience certificate to the petitioner along with monitory benefits payable within the period of 04 weeks from the date of receipt of certified copy of this order along with the interest calculated @ 8% per annum for the period commencing from 20.07.2019 (i.e. one month from the date the resignation of the petitioner became effective) till the date of actual realization.

Disposed of accordingly.

Pending application(s), if any, shall also stand disposed of.

(PANKAJ JAIN)
JUDGE

17.04.2023
shweta

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