

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

(202)

CWP-4038-2024

Date of Decision : May 01, 2024

Poonam

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(2)

CWP-4323-2024

Lalita Soni

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(3)

CWP-4336-2024

Anjali Sheokand

.. Petitioner

Versus

State of Haryana and others

.. Respondents

(4)

CWP-4734-2024

Surender Pal Singh

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ranjit Singh Kalra, Advocate, with
Ms. Mona Yadav, Advocate, for the petitioner
in all cases.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Mr. Angel Sharma, Advocate, for respondent No.5.

HARSIMRAN SINGH SETHI J. (ORAL)

1. By this common order, four writ petitions, the details of which have been given in the heading, are being disposed of as all the petitions involve the same question of law on similar facts. For the sake of convenience, the facts are being taken from CWP No.4038 of 2024.

2. In the present petition, challenge is to the order dated 05.02.2024 whereby, the petitioner(s) who are working as Ayurvedic Medical Officer in the Department of Health and Ayush Haryana, are being sent on deputation to an ex-cadre post as Professor, Reader and Lecturer and that too without their consent.

3. Learned counsel for the petitioner(s) argues that the petitioner(s) are doctors and are to discharge the duties as doctor and are not trained teachers whereas by the impugned order, the responsibility and functions, which the petitioner(s) have been directed to perform, is entirely different as compared to the post as Ayurvedic Medical Officer.

4. Learned counsel for the petitioner(s) submits that it is a settled principle of law that nobody can be sent on deputation against the will of the employee concerned and in the present case, the petitioner(s) have been posted on deputation without their consent, which is arbitrary and illegal. Further, as per the petitioner(s), some of the petitioner(s) do not fulfill the qualification required for teaching job.

5. In the reply filed by the respondents, the respondents have stated that the petitioner(s) can be posted anywhere in the State of Haryana keeping in view Rule 12 of the Haryana Ayurvedic Department (Group B) Services Rules, 1989 and further that as per the notification dated 16.02.2022, a Medical Officer can be sent on deputation as teacher but only

those Medical Officers can be sent who possess the qualification and experience for the required job and the deputation period should not be less than three years hence, as the petitioner(s) fulfill the requisite for teaching, the petitioner(s) have rightly been sent on deputation, which is only stop gap arrangement till the regular appointees join to teach the students.

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. It is a conceded position that the petitioner(s) are the Ayurvedic Medical Officers who are to perform the duties of a doctor while being posted in various dispensaries being run by the respondent-Department. The nature of duties does not include teaching as the teaching is a specialized job for which, an employee has to have a particular skill.

8. The question which arise is whether, a doctor can be sent on deputation to perform the duties of a teaching job. As per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.1293-1303 of 1995 titled as State of Punjab vs. Inder Singh, decided on 03.10.1997***, no employee can be sent on a deputation without his/her consent. The employee is only liable to discharge the duties of the post on which he/she has been appointed. In case, an employee is to be sent on deputation, his/her consent is necessary before sending him/her on deputation to perform the duties of a post other than the one on which he/she has been substantively appointed. The relevant paragraph of the said judgment is as under:-

“19. Concept of "deputation" is well understood in service law and has a recognised meaning. 'Deputation' has a different connotation in service law and the dictionary meaning of the word 'deputation' is of no help. In simple words 'deputation' means service outside the cadre or outside the

parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above. There is no escape for the respondents now to go back to their parent departments and working there as Constables or Head Constables as the case may be.”

9. The question which arise is whether the petitioner(s) who have not given the consent to be posted on a teaching job, can unilaterally be transferred to perform the duties of a post regarding teaching of the students than the one of the doctor for which the petitioner(s) have been appointed. In the absence of any consent given by the petitioner(s), there is no jurisdiction with the respondent-Department to post the petitioner(s) to perform the duties of teaching job. Merely that, the petitioner(s) fulfill the requisite of a teaching post does not mean that the respondent-Department get jurisdiction to post an employee on deputation and that too unilaterally.

10. In the present case, it is a conceded position that no consent has been given by the petitioner(s) to perform the duties of teaching post, which the petitioner(s) have been asked to perform by the respondents unilaterally, which action of the respondents is contrary to the settled principle of law and cannot be sustained.

11. Further, with regard to the argument of the learned counsel for the respondents that the cadre of the petitioner(s) is not being changed and they will be treated as Ayurvedic Medical Officer. The said contention is not borne out of the impugned order. A bare perusal of the impugned order would show that the Ayurvedic Medical Officer are being posted as Lecturer, Professor etc. which means that their cadre has been changed to that of teaching post and that too by way of deputation, which is impermissible.

12. Learned counsel for the respondents has not been able to dispute that while working on deputation, the petitioner(s) are to be treated as “ Professor, Reader and Lecturer” which is not the duty of an Ayurvedic Medical Officer.

13. The last argument which has been raised by the learned counsel for the respondents is that as per Rule 12 of 1989 Rules, the petitioner(s) can be posted anywhere in the State of Haryana. The same is correct but the petitioner(s) can only be posted as Ayurvedic Medical Officer but not as Lecturer, Professor or Reader. Hence, the argument raised on the basis of Rule 12 of 1989 Rules, is not at all applicable in the facts and circumstances of the present case.

14. Keeping in view the above, the impugned order sending the petitioner(s) on deputation to outside their cadre and that too without their consent, is beyond the jurisdiction of the respondents keeping in view the settled principle of law noticed hereinbefore and the impugned order dated 05.02.2024 is set aside.

15. All the writ petitions are allowed in above terms.

16. A photocopy of this order be placed on the file of other connected cases.

May 01, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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