

**(2024) 03 SHI CK 0074****High Court Of Himachal Pradesh****Case No:** Civil Writ Petition No. 2862 Of 2023, 415 Of 2024

Dr. Rajeev Sandal

APPELLANT

Vs

State Of H.P. &amp; Ors

RESPONDENT

**Date of Decision:** March 28, 2024**Hon'ble Judges:** Satyen Vaidya, J**Bench:** Single Bench**Advocate:** Onkar Jairath, L.N. Sharma, Balram Sharma**Final Decision:** Allowed**Judgement**

Satyen Vaidya, J

1. These two petitions have been heard and are being decided together as common questions of facts and law are involved.
2. Petitioner during his service with the department of Health and Family Welfare, Government of H.P., qualified his post graduation and thereafter Super Specialty in Clinical Hematology.
3. Respondent No.4 advertised various posts including one post of Assistant Professor (Medical Oncology/Clinical Hematology) in October, 2022. Petitioner applied for the above post and was found provisionally eligible. Petitioner was refused NOC by respondents No.1 to 3 on the ground that he had already undertaken to serve the State of H.P. by furnishing a bond or to forfeit the amount of bond.
4. Petitioner approached this Court by way of instant petition. On 23.05.2023, an interim order was passed by this Court directing respondent No.1 to provisionally issue No Objection Certificate in favour of petitioner, so as to enable him to participate in the recruitment process for the post of Assistant Professor (Medical Oncology and Hematology) in All India Institute of Medical Sciences Bilaspur, (H.P.). Petitioner participated and was selected but he could not join till final NOC was not issued by respondent No.1.
5. The claim of petitioner in CWP No. 2862 of 2023 is that he is being discriminated by respondents No.1 to 3, whereas similarly situated incumbent i.e. Dr. Kuldeep Thakur designated Assistant Professor of ENT IGMC, Shimla has been granted NOC subject to condition that he will serve the State of Himachal Pradesh through AIIMS, Bilaspur.
6. Time elapsed during pendency of the instant petition and in the meanwhile AIIMS, Bilaspur i.e. respondent No.4 issued communication dated 30.12.2023 informing the petitioner that since he had failed to join the offered post within the stipulated period of time and even after extension of joining time, his appointment was treated as cancelled. The above decision of respondent No.4, forced the petitioner to file CWP No.

7. Respondents No.1 to 3 by way of their reply in CWP No. 2862 of 2023 have contested the claim of petitioner on the ground firstly that the petitioner while proceeding on study leave to pursue the higher studies has executed bond to serve the State after completion of his DM in Clinical Hematology course. Being sponsored candidate of the State, he was paid leave salary in lieu of three years' study leave. Secondly, the case of Dr. Kuldeep Thakur has been sought to be distinguished on the ground that at the time of issuance of NOC in favour of Dr. Kuleep Thakur, the AIIMS Bilaspur was in formative stage, whereas the situation has changed now and lastly plea has been raised that the petitioner has been suitably adjusted in IGMC, Shimla and his services are required there.

8. I have heard learned counsel for the parties and have also gone through the entire record carefully.

9. The Government of Himachal Pradesh has notified Post Graduation and Super Specialty Policy for regulating the admissions to various Post Graduation and Super Specialty Courses in Medical Education applicable in the State of Himachal Pradesh.

10. The bond is required to be executed by a Medical Officer to serve the State of Himachal Pradesh for specified number of years in case he avails opportunity and proceeds on leave for Post Graduation or Super Specialty courses. Clause-6 of the Policy envisages the furnishing of bond to serve the State for at least five years. The petitioner has also submitted a bond in terms of Clause-6 of the Policy.

11. Noticeably, the bond is executed to serve the State. State has been defined in Clause 3.1.15 of the Policy as "State of Himachal Pradesh". Government has separately been defined in Clause 3.1.8 as "Government of Himachal Pradesh". Petitioner is seeking NOC to serve at AIIMS, Bilaspur which falls in the State of Himachal Pradesh. It being so, it is not understandable as to how the proposed service of petitioner at AIIMS, Bilaspur will be in violation of the bond or Clause 6 of the Policy. AIIMS Bilaspur presumably has been established with a purpose to provide best of the medical health care to the people of State of Himachal Pradesh.

12. The undertaking given by the petitioner to serve the State will not be violative at all in case he serves at AIIMS Bilaspur. The distinction being drawn by respondents No.1 to 3 between the cases of Dr. Kuleep Thakur and the petitioner is meaningless and even otherwise superfluous. In fact Dr. Kuldeep Thakur has also been granted NOC on the condition that he will serve the State of Himachal Pradesh through AIIMS Bilaspur.

13. For the purpose of issue in hand and keeping in view the above noticed provision in the Policy, there is clear distinction between "State of Himachal Pradesh" and "Government of Himachal Pradesh". There is no requirement to furnish bond to serve the Government of Himachal Pradesh, therefore, the State of Himachal Pradesh can be served through any of the medical institutions situated within the geographical boundaries of the State.

14. In light of above discussion, I have no difficulty to hold that despite all the efforts of the petitioner to get NOC from respondents No.1 to 3 in the very first instance, the same has not only been delayed but has been refused without any lawful reason. The consequence has been that respondent No.4 AIIMS Bilaspur has communicated to the petitioner that his selection shall be treated as cancelled. No delay or lapse can be attributed to the petitioner at any stage. Since, the petitioner has been victim of apathy of State functionaries, not only he has been made to lose a chance to grow his carrier, he has been harassed unnecessarily.

15. In Narender Singh vs. State of Haryana and others, (2022)3 SCC 286, in almost identical fact situation, the Hon'ble Supreme Court has held as under: -

"16. From the chronological dates and events reproduced herein above by no stretch of imagination, it can be said that there was any delay and/or lapse or fault on the part of the appellant. The advertisement for 1647 posts was issued by the Haryana Public Service Commission on 16.02.2016. The last date to submit the form online was 15.03.2016. As per the advertisement, the appellant was required to submit the NOC from his employer, which in the present case is District Elementary Education Officer, at the time of interview. The appellant applied for issuance of NOC on 22.03.2016 well in advance. The said application was received vide Receipt No. 4223 dated 04.04.2016 in the office of District Elementary Education Officer, Jhajjar. The appellant appeared for the written examination for the post in question on 05.03.2017. The result of the written examination was declared on 06.11.2017 and the appellant also cleared the written examination.

17. As observed hereinabove, the appellant was to produce an NOC at the time of interview. Therefore, in anticipation that non-receipt of the NOC may come in his way in getting the appointment therefore, the appellant filed the writ petition before the High Court being CWP No.27864 of 2017 on 05.12.2017 for issuance of the direction to the employer to release the NOC. The learned Single Judge passed the interim order in favour of the appellant in the aforesaid CWP No.27864 of 2017 vide order dated 07.12.2017 directing that if he falls within the zone of consideration for being called for an interview for the post in question, shall be provisionally interviewed, regardless of the fact that an NOC has not been issued so far by the Department of Elementary Education.

18. It is not in dispute that pursuant to the interim order dated 07.12.2017, the appellant was interviewed provisionally. However, his result was kept in a sealed cover. Thus, during pendency of the aforesaid writ petition and despite the fact that pursuant to the interim order dated 07.12.2017, the appellant was provisionally interviewed, the Public Service Commission declared the result of final selection in respect of the interviews conducted from 12 th to 14th December, 2017 on 15.12.2017 and the actual appointments were made on 12.07.2018. In the meantime, the appellant received the NOC on 06.06.2018 from his employer – District Elementary Education Officer and immediately on receipt of the same, the same was produced by him before the Public Service Commission on 08.06.2018, i.e., even before the actual appointments were made by the Public Service Commission, which were made on 12.07.2018. Thus, from the aforesaid, it can be seen that there was no delay and/or any fault on the part of the appellant.

19. Whatever was the lapse and/or the delay was, it was on the part of the employer of the appellant, who did not issue the NOC though applied on 22.03.2016 and which was issued only on 06.06.2018 and that too after the intervention of the High Court. Even the learned Single Judge also noted that there was a delay and/or lapse on the part of the District Elementary Education Officer, and therefore, even the learned Single Judge also imposed the cost of Rs.50,000/- on the employer of the appellant.

20. Once it is found that there was no lapse and/or delay on the part of the appellant and /or there was no fault of the appellant in not producing the NOC at the relevant time and when it was produced immediately on receipt of the same and that too before the appointments were made and when it is found that the last candidate, who is appointed, i.e., respondent No.4 herein is having less marks than the appellant and thus the appellant is a more meritorious candidate than the last candidate appointed, i.e., respondent No.4, to deny him the appointment is not justifiable at all. He cannot be

punished for no fault of him. Both, the learned Single Judge as well as the Division Bench of the High Court have committed grave error in not exercising the jurisdiction vested in it and in not directing the respondents to appoint the appellant though he is found to be more meritorious candidate than the last candidate appointed, i.e., respondent No.4."

16. The Court has been informed that AIIMS Bilaspur has not yet recruited anyone against the post of Assistant Professor in Medical Oncology/Clinical Hematology.

17. Keeping in view the fact situation of the case as also the exposition of law, both the petitions are allowed. Respondents No.1 to 3 are directed to issue NOC to the petitioner within one week from the date of passing of this judgment. The impugned communication/order dated 30.12.2023, Annexure P-3, in CWP No. 415 of 2024 is also quashed and set aside. Respondent No.4 is directed to appoint the petitioner as Assistant Professor (Oncology/Clinical Hematology) immediately on production by him of No Objection Certificate issued in his favour by the State Authorities. Pending applications also stand disposed of.