
(2025) 03 SHI CK 1184
In the High Court Of Himachal Pradesh
Case No : CWP No.2564 Of 2025

Dr. Yashpal Sharma

APPELLANT

Vs

State Of H.P. And Others

RESPONDENT

Date of Decision : 17-03-2025

Acts Referred:

Code of Civil Procedure Act, 1908 — Order 6 Rule 17

Citation : (2025) 03 SHI CK 1184

Hon'ble Judges : Satyen Vaidya, J

Bench : Division Bench

Advocate : J.L. Bhardwaj, Dhanwanti, Rakesh K. Thakur

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. The instant petition has been filed for grant of the following reliefs:-

i) That Impugned notification dated 22.06.2019 annexure P-12, may be quashed and set aside.

ii) That impugned order contained in annexure P-16 may be quashed and set aside and the respondents may be directed to issue post PG teaching experience to the petitioner w.e.f. from June 2019 to 19.11.2020 as senior resident in ENT Department.

iii) That the respondents may be directed to consider the petitioner for appointment of Assistant Professor.

2. The minimal facts as required for the determination of the instant lis are that the petitioner completed his MBBS from IGMC Shimla in May, 1998 and soon thereafter, was selected as Medical Officer. Thereafter, in March, 2007, petitioner was selected for diploma (ENT) course of two years conducted by the IGMC Shimla and has successfully completed his diploma in 2009. After successful completion of diploma, the petitioner served at various places from June, 2009

till March, 2016. In March, 2016, the petitioner was selected for two years DNB ENT i.e. Post Graduation Degree in ENT at Dr.B. Nanavati Hospital, Mumbai and after completion of the post graduate degree, the petitioner was appointed as Medical Officer Specialist at Dr.Y.S. Parmar Government Medical College, Nahan (for short 'medical college') on 11.10.2018, pursuance to which, he joined on 15.10.2018.

3. The National Medical Commission in exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956 (102 of 1956), the Board of Governors in supersession of Medical Council of India with the previous sanction of the Central Government, made the regulations to further amend the "Establishment of Medical College Regulations, 1999". These Regulations are called the "Establishment of Medical College Regulations (Amendment), 2019". These amendments shall be applicable for the applications received for the academic year 2019-20 onwards with retrospective effect in public interest and interest of no person shall be adversely affected by such retrospective effect.

4. In Clause 8 "Grant of Permission", sub clause (3)(1)(b) under the heading of Colleges in the stage from III renewal (ie. Admission of fourth batch) till recognition of the institute for award of M.B.B.S. degree" has been substituted as under:-

(b) Colleges in the stage of III & IV renewal (Le Admission of fourth & fifth batch) If it is observed during any inspection of the Institute that the deficiency of teaching faculty and or Residents is more than 20% and/or bed occupancy is less than 65%, compliance of rectification of deficiencies from such an institute will not be considered for renewal of permission in that Academic Year. Provided that prior to applying the above clause, a show-cause notice shall be issued to the Institute seeking an explanation as to why the punitive provisions contained in above-mentioned clause should not be applied against it and the same shall be disposed off after granting an opportunity of hearing by a reasoned order.

In order to save the affiliation of respondent No. 3 the petitioner was designated as senior resident against the vacancy as the petitioner was fulfilling the eligibility criteria to be appointed and posted as Senior Resident. The inspection team of the Medical Council of India was to visit the college for inspection and thereafter respondent No.3 vide office order dated 05.04.2019 re-designated the petitioner as Senior Resident, ENT against the vacancy.

5. On 19.11.2020, the petitioner was selected as Senior Resident on regular basis. Now, the grievance of the petitioner is that even though, he had been teaching w.e.f June, 2019 to 19.11.2020, the respondents are not issuing him the requisite experience certificate, hence this petition.

6. The respondents have filed reply and the only ground for resisting the claim of the petitioner is that even though the petitioner was appointed as Medical Officer Specialist vide letter dated 24.09.2018 by the Government and joined his duties on 11.10.2018 and was thereafter re-designated as Senior Resident vide office

order dated

5. 04.2019, but this was subject to the condition that the said re-designation was purely for stop gap arrangement and did not confer any right upon him for continuation/regularization.

7. It has further been averred that re-designation of the petitioner as Senior Resident was not in terms of Clause

7. 5.4 of the Resident Doctor Policy, which reads as under:-

"Only those candidates shall be granted "teaching experience" who are appointed/ selected under the Senior Resident/Resident Doctor Policy notified by the Government from time to time."

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

9. At the outset, it needs to be observed that an identical issue has already been decided by a learned Single Judge of this Court in CWPOA No.1423 of 2020 titled as Dr.Uday Bhanu Rana vs. State of H.P and others, decided on 14.09.2020, wherein, the plea of the petitioner had been allowed on the ground that the respondent-State cannot deny grant of experience certificate to the petitioner for the period, he was called upon to perform the duties as Senior Resident. The facts in this case are no different.

10. Be that as it may. A perusal of the chronological list of events, as encapsulated above, would go to indicate that the petitioner had initially vide order dated 10.10.2018 was posted as a Medical Officer (ENT Specialist) and directed to join the duties at the medical college. The petitioner accordingly joined the duties. Later on, the post was re-designated and vide office order dated 05.04.2019, the petitioner was shown to be the Senior Resident working in the ENT department of the medical college. The respondents themselves issued a Notification dated 22.06.2019 notifying the Resident Doctor Policy, which is in supersession to all previous Notifications and in continuation to PG/Superspeciality Policy, wherein the Senior Resident has been defined in Clause 3.1, to mean 'Senior Resident' or 'Tutor Specialist' shall mean the doctors who have completed their Post Graduation in any clinical and non-clinical specialty as recognized by Medical Council of India.

11. The service conditions of the petitioner were to be governed by the policy dated 22.06.2019 and not the policy notified subsequently on 24.12.2021. Since the policy of 2019 did not contain any clause akin or alike or pari-materia to clause 7.5.4, therefore, this clause cannot be permitted to be invoked by the respondents and applied to the case of the petitioner.

12. It is not in dispute that it was the respondent-State itself that posted the petitioner at the medical college and thereafter called upon him to perform the duties of a Senior Resident.

13. It is further not the case of the State that petitioner when appointed was not qualified or had been disqualified to be appointed as a Senior Resident and he was not possessing the requisite educational qualification. As per the respondent department, the only ineligibility for which the petitioner suffered from being appointed as a Senior Resident was that his appointment and re-designation as Senior Resident was purely a stop gap arrangement. But, this stand is not at all tenable, in view of subsequent order dated 19.11.2020, whereby the petitioner was given tenure appointment of three years.

14. Apart from the above, the respondents themselves have acknowledged the petitioner to be working as Senior Resident from day one, as is evident from the documents appended with the petition vide Annexures P-8 to P-11 respectively.

15. Somewhat identical issue came up for consideration before the Hon'ble Supreme Court in Civil Appeal No.10800 of 2024 titled as Chaudhary Charan Singh Haryana Agricultural University, Hisar and others vs. Monika and others, decided on 29.11.2024, where a Clerk initially appointed as outsourced manpower and not appointed on a sanctioned post was being denied the benefit of marks for experience. The relevant paras 24 and 25 of the judgment read as under:-

"24. We also do not agree with the contention of the University that the first Respondent did not work on the post of Clerk and rather performed "office work". The certificate awarded to her evidently mentions that the work she was required to undertake is the work of Clerk-cum-Typist. Moreover, the certificate also mentions that her work was found quite satisfactory. The first Respondent has also brought on record a memo by the Professor and Head of the Department which specifically acknowledges that she has been designated as a Clerk-cum-Typist during her tenure.

25. The first Respondent, thus, cannot be denied the benefit of mark for experience merely because at the time of appointment as outsourced manpower, she was not appointed on a sanctioned post."

16. In view of the aforesaid discussion and for the reasons stated above, the petition is allowed. The respondents are directed to issue Post PG teaching experience to the petitioner, showing his experience as Senior Resident in ENT department from June, 2019 to 19.11.2020 and the orders to the contrary are quashed and set aside.

17. As regards the plea of petitioner to consider his case for appointment as Assistant Professor, we find that the cause of action for such plea cannot be clubbed with this petition and, therefore, it shall be open to the petitioner to resort to the appropriate remedy as is available to him under the law.

18. Pending applications, if any, also stand disposed of.