

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.10211 of 2023

Date of Decision: 02.05.2025

Dr. Ashok Garg		Petitioner
	Versus	
State of H.P. and Others		Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.Whether approved for reporting? ¹ Yes.

For the Petitioner: M/s Onkar Jairath and Anshul Jairath, Advocates.**For the Respondents:** Mr. Anup Rattan, Advocate General, with Mr. Rajan Kahol, Mr. B.C. Verma and Mr. Vishal Panwar, Additional Advocates General, with Mr. Ravi Chauhan, Deputy Advocate General, for State.

Mr. Shiv Pal Manhans, Senior Panel Counsel, for respondent No.4.

Sandeep Sharma, Judge (oral):

By way of instant petition, petitioner has prayed for following main relief:

“i) That the writ in the nature of Mandamus or any other appropriate writ order or directions may kindly be issued directing the Respondents to issue No Objection Certificate in favour of the Petitioner for the purpose of recruitment to the post of Assistant Professor (Neonatology) in All India Institute of Medical Sciences, Bilaspur, District Bilaspur (HP).”

2. Petitioner herein, after his having done M.B.B.S. in the year 2007 from Rajendra Prasad Government Medical College, Tanda, came to be appointed as Medical Officer in the year 2009 on

¹Whether the reporters of the local papers may be allowed to see the judgment? Yes.

contract basis and thereafter his services were regularized w.e.f. 18.07.2011. After being regularized, petitioner completed his M.D. in Pediatrics from I.G.M.C., Shimla in the year 2013-16 and thereafter Doctorate of Medicine in Neonatology in the year 2023 from P.G.I., Chandigarh. His after having done M.D., petitioner joined back in the year 2016 and thereafter on completion of his Doctorate of Medicine, as detailed hereinabove, he joined back in I.G.M.C., Shimla. In the month of August 2023, he was designated as Assistant Professor in the Department of Pediatrics. On 06.11.2023, All India Institute of Medical Sciences, Bilaspur (***for short, hereinafter referred to as "AIIMS, Bilaspur"***) issued an advertisement dated 06.11.2023 thereby inviting applications for recruitment to the post of Professor, Additional Professors, Associate Professors and Assistant Professors. Petitioner being fully eligible, applied against the post of Assistant Professor (Neonatology). On 08.12.2023, AIIMS, Bilaspur, found the petitioner to be fully eligible and accordingly published the list of provisionally eligible and ineligible candidates. Though name of the petitioner figured at serial No.23 in the list of provisionally eligible candidates for the post of Assistant Professor, but with remarks "Subject to submission of NOC from Competent Authority". Case of the petitioner was duly forwarded to the respondent No.2 vide communication dated 25.11.2023, but since nothing was heard,

petitioner was compelled to approach this Court in the instant proceedings, praying therein for relief, as has been reproduced hereinabove.

3. Pursuant to notices issued in the instant proceedings, respondents No.1 to 3 have filed reply under the signatures and affidavit of Director, Health Services, Himachal Pradesh, wherein prayer made on behalf of the petitioner has been refuted on the ground that he has furnished a bond on 04.07.2020 to serve the State of Himachal Pradesh for a period of seven years after the successful completion of his Super Specialty Course, failing which, he shall pay a sum of Rs.60,00,000/- along with interest @ 18% per annum and salary drawn by him while undergoing the said course, vide his application dated 09.07.2020.

4. While placing reliance upon the judgment passed by Hon'ble Apex Court in Writ Petition (Civil) No.376 of 2018, titled as ***Association of Medical Super Specialty Aspirants and Residents and Others Vs. Union of India and Others***, along with connected matters, respondents have further set-up a case before this Court that all Doctors, who have executed compulsory bonds, shall be bound by the conditions contained therein. It has been further averred in the reply that sponsorship is a special policy of the State Government to improve the Specialist/Super Specialty services in the State and

further to provide best possible medical facilities to the people in the largest interest of the patients. Respondents have claimed that No Objection Certificate cannot be claimed as a matter of right, rather, prayer made on behalf of the petitioner deserves outright rejection on account of the fact that State is facing acute shortage of Specialist Doctors.

5. Taking note of averments contained in the pleadings adduced on record by respective parties, as detailed hereinabove, this Court vide order dated 13.12.2023, directed the respondents to issue "Provisional No Objection Certificate" to the petitioner, enabling him to participate in the selection process, initiated by AIIMS, Bilaspur. Though pursuant to Provisional No Objection Certificate given by respondent, petitioner participated in the selection process initiated by AIIMS, Bilaspur, against the post of Assistant Professor in the Department of Neonatology, but he, despite his being declared selected against the post in question, has not been able to join till date, for want of final N.O.C.

6. Before case at hand could be heard and decided on its merits on the basis of pleadings adduced on record by respective parties, this Court came to be apprised by learned counsel representing the petitioner that petitioner is ready and willing to

deposit sum of Rs.60,00,000/- as bond money, subject to his being given final N.O.C. on acceptance of technical resignation.

7. Taking note of aforesaid submission made by learned counsel representing the petitioner, this Court called upon learned Additional Advocate General to have instructions. Pursuant to afore directions issued by this Court, learned Additional Advocate General made available copy of communication dated 26.04.2025, issued under the signatures of Director, Health Services, Himachal Pradesh, which reads as under:

“Kindly refer to the above mentioned CWP as well as orders dated 11-04-2025 as passed therein by the Hon'ble High Court of HP and as per the directions of Government vide letter no. HFW-D(E)3-115/23 dated 26.04.2025.

In this regard, it is submitted that the request of the Petitioner as received vide letter dated 13.03.2025, annexure A-4(colly), regarding payment of bond amount and issuance of final NOC alongwith Technical resignation after selection as Assistant Professor Neonatology at AIIMS Bilaspur was further forwarded to the Government vide letter dated 17.03.2025, The Government in turn vide its letter dated 22.03.2025, annexure A-5, has conveyed that the bond money of Rs. 60 Lakhs as per PG/SS Policy dated 27.02.2019 may be recovered from the petitioner at the first instance and thereafter the proposal be resubmitted for acceptance of his resignation. Accordingly the above directions of the Government stands duly endorsed to the petitioner by the office of undersigned vide letter dated 24.03.2025, for information and further necessary action.

A set of four copies of the above instruction is being enclosed and sent herewith for favour of kind information and record with the request that the same may very kindly be brought on record of the Hon'ble Court on 28-4-2025 or on the next date of hearing(s) please.”

8. As per aforesaid communication, though respondent-Department is ready and willing to accept the proposal of the

petitioner for resignation, but subject to payment of Rs.60,00,000/- in advance. Taking note of aforesaid communication, this Court passed the order dated 28.04.2025, which reads as under:

“While placing on record communication dated 26.04.2025, issued under the signatures of Director Health Services, Himachal Pradesh, Mr. Anup Rattan, learned Advocate General states that in case petitioner is ready and willing to deposit sum of Rs. 60 lakhs as per PG/SS Policy dated 27.02.2019, his prayer for acceptance of technical resignation shall be accepted.

Though, petitioner, who is present in Court, states that he is ready and willing to deposit the aforesaid amount, but since respondent No.4 has already withdrawn the offer of appointment made to the petitioner pursuant to his application for appointment against the post of Assistant Professor in the Department of Neonatology, AIIMS Bilaspur petitioner is directed to first confirm from respondent No.4 “whether offer of appointment made to him in the year 2024 is still open or not?”, and apprise this Court on the next date of hearing. List on 2.5.2025, as prayed for.”

9. Since selection to the post of Assistant Professor in the Department of Neonatology, in AIIMS, Bilaspur, pursuant to advertisement dated 06.11.2023, was made on 22.12.2023 and thereafter he was not given appointment on account of pendency of present petition, this Court specifically called upon Mr. Shiv Pal Manhans, learned Senior Panel Counsel representing respondent No.4-AIIMS, Bilaspur, to confirm from respondent No.4 “**whether offer of appointment made to the petitioner in the year 2024 is still open or not?**” Pursuant to afore directions issued by this Court, Mr. Manhans, on instructions, states that post offered to the petitioner, pursuant to his application made in terms of advertisement dated

06.11.2023, is still vacant and thereafter, no process, if any, has ever been initiated.

10. Learned counsel representing the petitioner, on instructions from the petitioner who is present in Court, states that in the event of his being issued final N.O.C. from the department, he shall get appointment at AIIMS, Bilaspur.

11. Mr. Rajan Kahol, learned Additional Advocate General, while referring to the judgment passed by Hon'ble Apex Court in ***Association of Medical Super Specialty Aspirants and Residents*** (supra) as well as judgment dated 16.05.2024 passed by Division Bench of this Court in LPA No.93 of 2024, titled ***State of H.P. and Others Vs. Dr. Rajeev Sandal and Another***, vehemently argued that once petitioner has submitted bond, he is under obligation to serve the State of Himachal Pradesh for the bond period and on account of afore fact, respondent-State cannot be compelled to issue N.O.C. to the petitioner enabling him to join at AIIMS, Bilaspur.

12. There cannot be any quarrel with proposition of law laid down in cases, detailed hereinabove, that bonds executed by Doctors, after their having done MBBS, medical courses, etc., to serve the State are binding and can be enforced, but since petitioner herein has agreed to pay the entire bond money i.e. Rs.60,00,000/-, he cannot be compelled to work against his wishes. Very purpose and

object of furnishing bond is to ensure that Doctor, who has studied on Government expenditure, is made to work for State, after his/her having done MBBS Course, Medical Courses etc., but once bond condition itself provides that in the event of violation of bond, bond amount shall be payable by the executant of bond, it cannot be said that even after deposit of bond money, in terms of bond executed by the petitioner, he can be compelled to work for the bond period. Otherwise also, if the judgments pressed into service are taken into consideration, same are not applicable to the facts of the present case for the reason that in afore cases, very condition of execution of bond, if any, at the time of pursuing higher studies by the Doctors was laid challenge. In afore cases, petitioner claimed that bond, being restraint on their professional activity, if any is executed, would fall under the expression “forced labour” violating Article 23 of the Constitution, however, such plea was not accepted by Hon’ble Apex Court as well as Division Bench of this Court, rather, it specifically came to be held in aforesaid judgments that all the Doctors, who had executed compulsory bonds would be bound by the conditions contained therein. Since condition in the bond itself suggests that on account of non-execution of bond, person responsible for executing the bond shall be liable to pay the bond money (Rs.60,00,000/- in the case at hand) and person responsible, i.e. petitioner herein, is ready and

willing to pay the bond money, in no eventuality, he can be compelled to work during the bond period.

13. Similarly, this Court finds no force in the submission of learned Additional Advocate General that on account of grant of NOC, public at large shall suffer on account of paucity of Doctors, in view of the fact that pursuant to grant of NOC, if any, petitioner herein shall be joining AIIMS, Bilaspur, which is a premium institution, established by the Central Government. Since afore institution falls within the State of Himachal Pradesh, it cannot be said that interest of State would not be adequately protected on account of grant of NOC in favour of the petitioner, rather, this Court is of the view that on account of posting of the petitioner at AIIMS, Bilaspur, which admittedly has better facility and Department in the field of Neonatology, public of State of Himachal Pradesh will have better medical facilities.

14. Consequently, in view of aforesaid development, whereby petitioner is ready and willing to pay the entire bond money i.e. Rs.60,00,000/-, coupled with the fact that respondents are ready and willing to initiate the process for accepting the technical resignation of the petitioner, subject to deposit of Rs.60,00,000/-, this Court sees no justification to keep the present petition alive and accordingly the same is disposed of with the direction to the petitioner to deposit sum of Rs.60,00,000/- as bond money within a period of

seven days' with the respondent-department, which in-turn shall consider and decide the issue of technical resignation tendered by the petitioner within a period of three days' thereafter, failing which, resignation rendered by the petitioner shall be deemed to have been accepted. Needless to say, after acceptance of technical resignation and receipt of sum of Rs.60,00,000/-, final N.O.C. shall be issued in favour of the petitioner, enabling him to submit the same to AIIMS, Bilaspur, while giving his joining.

15. Though there is nothing on record with regard to cancellation of offer of appointment given to the petitioner by AIIMS, Bilaspur, as Assistant Professor in the Department of Neonatology, but yet this Court taking note of the fact that present petition remained pending for considerable time, coupled with the fact that petitioner shall be tendering his technical resignation in the State of Himachal Pradesh, this Court hopes and trusts that no undue hurdle, if any, shall be created by respondent No.4 while accepting his joining, in terms of his selection made in the year 2023.

16. In the aforesaid terms, present petition is disposed of, so also, pending applications, if any.

List for compliance on 13.05.2025.

**(Sandeep Sharma),
Judge**

May 02, 2025
(Rajeev Raturi)