

2025:HHC:18003

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**LPA No. 40 of 2022 a/w connected matter****Reserved on 15.05.2025****Decided on: 06.06.2025****LPA No. 40 of 2022**

Vijay Singh Chandel

.....appellant

Versus

State of H.P & Others

...respondents

LPA No. 46 of 2022

Vijay Singh Chandel

.....appellant

Versus

State of H.P & Others

...respondents

*Coram****Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.******Hon'ble Mr. Justice Ranjan Sharma, Judge.******Whether approved for reporting?¹ Yes***

For the appellant(s):

Mr. Dilip Sharma, Senior Advocate with Mr. Manish Sharma, Advocate, in both the appeals.

For the respondents:

Mr. Gobind Korla, Additional Advocate General, for respondent(s)-State, in both the appeals.

Mr. Vikrant Thakur, Advocate, for respondent-HPPSC, in both the appeals.

G.S. Sandhawalia, Chief Justice

The challenge in LPA No.40 of 2022 is against the order passed by the learned Single Judge in CWP No.1465 of

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?*

2020 filed by the appellant which was dismissed on 30.12.2021. Similarly, challenge in LPA No.46 of 2022 is a judgment of even date passed in **CWP No.1258 of 2020** titled as ***Dr. Nikhil Kumar Soni vs. State of H.P. and Others.***

2. The relief claimed in the amended writ petition was for seeking quashing of the communication dated 11.08.2020 (Annexure P-17) vide which the NOC granted in favour of the petitioner, the Senior Resident in the Department of Surgery was withdrawn by the Director of Health Services, Himachal Pradesh. Resultantly, the petitioner prayed for the directions to offer the appointment for the post of Assistant Professor in the Discipline of Surgery in SLBS Government Medical College, Ner Chowk, Mandi with effect from the date it had been offered to Dr. Vishal Thakur along with consequential benefits.

3. The reason which weighed with the learned Single Judge was that the essential qualification *inter alia* was three years teaching experience after completing Post Graduation with the concerned subject. The College in which the petitioner has been designated as Senior Resident was established only on 31.05.2017 when permission had been granted under

Section 10A of the Medical Council Act, 1956. Resultantly it was held that teaching experience could be only granted to a teacher from the date when the first batch was admitted in the studies undertaken and not before that.

4. Resultantly, keeping in view the advertisement dated 27.12.2019 (Annexure P-6), which provided the cut off date as 16.01.2020, it was held that he was not eligible to participate in the process of selection undertaken by the Public Service Commission. Resultantly, the appellant-writ petitioner feeling aggrieved, filed the present appeal.

5. The learned Senior Counsel appearing for the appellant has argued that the benefit as such of three years eligibility should have been counted from 08.12.2016 (Annexure P-5), the date when the appellant was designated as Senior Resident and therefore submitted that the appellant had experience of three years requisite period. It is further submitted that similarly situated persons as such had been granted the benefit from the said date and therefore the petitioner-appellant is also entitled for the same relief.

6. Counsel for the State, on the other hand, submitted that once the statutory Rule as such provides that three years teaching experience is required, the learned Single Judge was well justified in coming to the conclusion that the requisite eligibility was not there on the cut off date, and it is submitted that parity cannot be sought against similarly situated persons even if the said person had been granted the said benefit as Article 14 of Constitution of India does not apply in the negative context. Resultantly, reliance was placed upon Rule 7 of the Himachal Pradesh Medical Education Service Rules, 1999, whereby it is provided that the method of recruitment for appointment to various posts in the service was specified at Annexure-B to the said Rules, wherein the minimum educational qualification and other qualifications required for the direct recruits for the post of Assistant Professor was provided of at least three years teaching experience as Lecturer/Registrar/ Demonstrator/Resident after doing Post Graduation in the concerned specialty in any recognized college.

Facts of the case:

7. The factual matrix as such is that the appellant had passed M.B.B.S in the year April 2000-2001 from H.P University (IGMC & Hospital), Shimla and thereafter passed his Masters in Surgery from the same University in July 2016. After joining the Zonal Hospital, Mandi (H.P) as Medical Officer Specialist on 16.08.2016 on the establishment of the State Level Medical College at Ner Chowk known as “Shri Lal Bahadur Shastri Government Medical College and Hospital”, he was shifted to SLBS Government Medical College, Mandi at Ner Chowk and designated as Senior Resident w.e.f. 08.12.2016 which would be clear from the Notification dated 08.12.2016 and Service Certificate/Experience Certificate dated 04.01.2020 (Annexures P-5 and P-3, respectively).

8. The respondent-Commission vide advertisement No.25/2019 dated 27.12.2019, advertised two posts of Assistant Professor, General Surgery, in the un-reserved category, wherein, it has been provided that date of determining the eligibility of candidates, in terms of essential

qualifications and experience, shall be reckoned as on the closing date of 16.01.2020.

9. As per Clause 3 of advertisement, it was necessary for the candidates to have the required experience for determining his/her eligibility after acquiring the requisite essential qualifications. The candidates in Government service (Regular Service), were required to apply to the Commission along with requisite examination fees with the information to the Head of Departments/Employer for issuing NOC and the candidate was not to be interviewed unless he or she produces NOC from the concerned employer.

10. The petitioner had submitted his online application and on the strength of NOC issued in his favour dated 09.01.2020, the names were duly sponsored by the Health and Family Welfare Department, Himachal Pradesh, vide list dated 01.02.2020 (Annexure P-8), wherein the name of petitioner figured at Sr. No.9. The said NOC was held in abeyance vide communication dated 24.02.2020 (Annexure P-9) on account of the clarification of the Senior Residency Tenure from the Government.

11. Resultantly, petitioner had filed **CWP No.994 of 2020** titled as ***Dr. Ranesh Kumar and Ors. vs. State of H.P. and Ors.***, along with similarly situated persons which was decided on **03.03.2020** (Annexure P-12), wherein the State had given concessions that provisional NOC would be given to the petitioners to appear for the said post and that the writ petition was disposed of as having been rendered infructuous with liberty to seek their remedy in accordance with law, in case they still felt aggrieved.

12. The recruitment process having taken place and after the result having been declared, the recommendation (Annexure P-16) as such for appointment was given in favour of Dr. Vijay Singh Chandel along with Dr. Vishal Thakur, for the two posts. However, vide Notification dated 21.04.2020 (Annexure P-14), Dr. Vishal Thakur, was offered appointment against one of the posts only and the petitioner was not issued the appointment order. Reliance was placed upon one communication dated 14.09.2017 (Annexure P-15) wherein it has been clarified that designation of Senior residents would cease on joining of the said selective Senior Residents.

Thereafter, communication dated 11.08.2020 (Annexure P-17) was received, whereby the NOC in favour of the petitioner was withdrawn along with two other candidates which led to the filing of the writ petition which was subsequently amended.

13. Civil Writ Petition No.1258 of 2020 was filed by Dr. Nikhil Kumar Soni, whereby the appellant Vijay Singh Chandel was impleaded as respondent No.5 and the prayer as such was challenging the recommendation made on 06.03.2020 (Annexure P-7), wherein the present appellant's name had been recommended to the Government for appointment. The writ petition was based on the fact that the persons who have not completed their Senior Residency for a tenure of 3 years should not have been considered for appointment. The stand of the State as such was that the NOC in favour of the present appellant had been ordered to be held in abeyance till further clarification from the Government and the grievance of the petitioner stood redressed and nothing survived in the writ petition.

14. The stand of the State was that a Committee had been constituted at Directorate Level for making

recommendations whether the designated period of Senior Residency should be counted and decision had been arrived at on 14.09.2017. It was a stop gap arrangement. The petitioner was designated as a Senior Resident without the completion of the mandated service in the peripheral health institutions and clarification had been issued that Doctors designated in the said institutes would have to be treated as a field posting only. However, the said period was not to be admissible for counting as teaching experience.

15. It was pleaded that Senior Residency has to be reckoned from 14.09.2018, as per the Notification (Annexure R-3), he had been appointed for a period of one year. The eligibility criteria as such was stressed upon and it was averred that 3 years experience as regular Senior Resident was not there and as per the letter dated 17.07.2020, the NOC had been issued but after realizing the fact that the applicant did not have the requisite three years teaching experience as per the Medical Education Service Rules, 1999, the said NOC had been kept in abeyance and thereafter the same had been withdrawn on 25.07.2020. The interview was provisional as

such and the clarification to the period of designation was issued subsequently and he was not held eligible to the post of Assistant Professor.

Reasoning for upholding the order:

16. The factual matrix being clarified, it is necessary to to fallback on the Rule which governs the issue in question. Since petitioner's right to be appointed as an Assistant Professor would be as per the method of recruitment provided under the Medical Education Service Rules, 1999, as per Appendix-B. The minimum educational and other qualifications required for direct recruits, read as under:-

" Name of the Post Minimum Educational and other Qualifications required for direct recruits

Assistant Professor ***Essential qualifications.***-(i) A recognised medical qualification included in the first or second Schedule or Part-II of the third Schedule (other than Licentiate qualifications) to the Indian Medical Council Act, 1956. Holders of Educational Qualification included in Part-II of the Third Schedule should also fulfill the conditions stipulated in sub-section (3) of Section 13 of Indian Medical Council Act, 1956.
(ii) A post-graduate degree in the concerned specialty mentioned in Part-A of Annexure II or its equivalent qualifications.

(iii) Atleast 3 years teaching experience as Lecturer/Registrar/Demonstrator/Resident after doing post-graduation in the concerned speciality in any recognized Medical College.

Desirable qualifications. *-(i) Knowledge of customs, manners and dialects of Himachal Pradesh and suitability for appointment in the peculiar conditions prevailing in the Pradesh.*

(ii) Publication of research papers in Index Journals."

17. The perusal of the above would go on to show that the requirement is three years teaching experience as Lecturer/Resident after doing the Post Graduation with the concerned specialty which was not available with the petitioner inasmuch as the said College was set up on 31.05.2017 in terms of Section 10A of the Indian Medical Council Act, 1956. The teaching experience thus would only as such be available to the petitioner post setting up of the College and could not have been there earlier though he might have been posted as such by the State at the initial stage for fulfilling the norms of the MCI by the State Government.

18. The proposal Annexure P-4, the decision would also go on to show that on signing MOU with ESIC on

04.07.2016, the said ESIC Medical College and Hospital, Ner Chowk was taken over. The last date for applying to MCI for establishment of Medical College was 07.07.2016 and for the purpose of creating the requisite infrastructure and the minimum requirement as per the letter of permission, the necessary postings had been done and the petitioner was thus one of the said persons posted at the said Medical College whereby 15 Medical Officers had been shifted from from Zonal Hospital, Mandi.

19. Thus, at that point of time, there was no student as such available in the College and in such circumstances, the learned Single Judge had come to the conclusion that the teaching experience could not be granted before the said date.

20. It is a settled principle that the eligibility has to be seen at the time of the cut off date and is sacrosanct as such and in such circumstances, the reasons as such for the State to withdraw the NOC granted does not fault in any manner. Merely because he has been designated and working as a Senior Resident in the College since the date of experience

could not be treated as 08.12.2016 as the first batch of the annual intake of the M.B.B.S students only took place from the Academic Year 2017-18 and the three years teaching experience is to be calculated from that date. The petitioner thus did not have the requisite three years experience as on 16.01.2020.

21. Merely because he is qualified as such and the strength of provisional concession given on an earlier account would as such not make it his legal right as he had only right of consideration which was subject to the terms of eligibility as per the terms of the advertisement.

22. It is a settled principle that the advertisement as such has a force of law and binds both the petitioner and the respondents-State. The relevant portion of the advertisement regarding the eligibility conditions, read as under:-

“Eligibility Conditions:-

(i) The date of determining the eligibility of all candidates in terms of essential qualification(s), experience etc., if any, shall be reckoned as on the closing date, i.e. 16th January, 2020 for submission of Online Applications through.

(ii) xxxxx

(iii) For recruitment to the post(s) to be filled up on the basis of experience, it will be necessary for the candidates to have the required experience for determining his/her

eligibility after acquiring the requisite essential educational qualification(s)."

The other conditions requiring the NOC, reads as under:

"3. In Government service (regular service) candidates may apply to the Commission along with requisite examination fees with information to their Head of Departments/Employer for issuing NOC. Any candidates, who are in regular Government Service or Government owned Industrial service, will not be interviewed unless he/she produces NOC from the concerned employer."

23. Thus, in the absence of the requisite NOC as a regular service candidate he was not liable to be interviewed and the NOC having been withdrawn for valid reasons as per the provisions of the Rules could not be said to be an arbitrary decision of the State, which can be judicially reviewed and reversed, in any manner.

24. Resultantly, we have come to the conclusion that the petitioner not being eligible as per the statutory rules which provides the necessary qualifications and the minimum qualifications for direct recruits and the minimum educational requirements and the requisite teaching experience which would necessarily be only when the concerned intake of the students would come and not prior to that. Resultantly, the

reasoning which has been arrived at by the learned Single Judge cannot be faulted in any manner.

25. The claim that Dr. Vishal Thakur as such had been granted the said benefit on 21.04.2020 (Annexure P-14) cannot be faulted in any manner as the said selection is not subject matter of challenge as such. It has not been pointed out in the writ petition that how he is not eligible and therefore merely because the said applicant-candidate as such has been granted the benefit it would not give the petitioner any legal right, as such, since there were two posts advertised. The said person being offered appointment, would not give petitioner any legal right since the said candidate was not as such having any dispute earlier and neither his experience certificate had been doubted nor his NOC had ever been kept in abeyance. No material has been placed on record that the said candidate as such was not having the requisite three years experience and neither there is any challenge to his appointment, therefore, the issue of parity under Article 14 of the Constitution of India cannot be raised as such against the said candidate.

26. In the absence of any material on record and in absence of any specific averment made in the rejoinder (sic replication) and also in the absence of his being impleaded as a respondent, the petitioner cannot be given any relief. Even otherwise it is a settled principle that Article 14 of the Constitution of India is not a negative right as such whereby the petitioner can claim parity.

27. In such circumstances, we do not find any plausible reason as such to interfere with the well reasoned order passed by the learned Single Judge dismissing the writ petition filed by the appellant. Regarding LPA No.46 of 2022, the learned Single Judge vide his order had only disposed of the writ petition that since the appellant's writ petition has been dismissed and his candidature has to be held bad by Court on account of not possessing the requisite teaching experience certificate, the necessary benefit could be given to the writ petitioner-Dr. Nikhil Kumar Soni, if he falls in the zone of consideration.

28. Resultantly, no further orders are required in LPA No.46 of 2022 since we have already dismissed the first

appeal of the appellant by holding that he does not have the requisite qualifications as per the Recruitment Rules.

29. Resultantly, the appeals stand dismissed. Pending miscellaneous application(s), if any, shall also stands disposed of.

(G.S. Sandhawalia)
Chief Justice

June 06, 2025

(ankit)

(Ranjan Sharma)
Judge