

(19) In the light of aforesaid reasons, as there is no merit, therefore, the instant petitions for leave to appeal are hereby dismissed as such.

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J.S. Mehndiratta

*Before K.Kannan,J.*

**DR. DHIVYA S. WIFE OF DR.PRADEEP KUMAR**—*Petitioner*

*versus*

**STATE OF PUNJAB AND OTHERS**—*Respondent*

**CWP No. 13397 of 2014**

November 12, 2014

*Constitution of India, 1950 – Art.226 – Quota in education - Payment under bond – Petitioner gained admission in MD course in Physiology with Patiala Government College under 50% All India Quota – Students taking admission under All India Quota had to sign bond at time of admission that if he/she left college, would pay Rs. 15 lakh – Petitioner secured admission in PGI, Chandigarh for post graduate course in medicine and opted to leave Patiala Government college – She sought for return of her original certificates that were submitted in Patiala college – Said college declined to release certificates on ground that she was bound to pay ₹15 lakhs as contained in clause of bond - Held, that petitioner was governed both by terms of prospectus and relevant Government notifications – Prospectus did not require that students getting admission under All India Quota had to furnish bond in favour of Government – If there was no bond, there was no question of an obligation which did not exist through any instrument in writing – Question of enforcement of bond terms or payment of ₹15 lakh did not arise.*

*Held*, that the petitioner could be governed both by the terms of the prospectus and the Government notification issued in the year 2013. The prospectus does not require the furnishing of bond in favour of the Government to All India Quota. What the prospectus omits to do is filled up by notification of the Government that applies the requirement of a bond not only to the State quota students but also to All India quota. If this clause were to be applied by the State to require ₹ 15 lacs to be paid then such an enforcement is possible only if there is a bond.

If there is no bond, there is no question of an obligation which does not exist through any instrument in writing. Assuming that such an obligation could arise even without a written instrument, it can be supported only by passing of consideration. That consideration could be the payment of stipend to a candidate that has also not been done admittedly. The question of payment of `15 lacs or enforcement of the bond against the petitioner, therefore, cannot arise.

(Para 5)

Mr. Vivek Singla, Advocate *for the petitioner*

Mr. Ranbir Singh Pathania, DAG, Punjab

Mr. Manish Dadwal, Advocate, *for respondent No.2*

**K. KANNAN J. (ORAL)**

C.M. No.13654 of 2014

Application is allowed.

Reply is taken on record.

**CWP No.13397 of 2014**

(1) The petitioner who had gained admission in MD course in Physiology on 18.06.2014 with the Government College, Patiala affiliated to the Baba Farid University secured admission from PGI, Chandigarh for Post-graduate course in Medicine in Bio-Chemistry stream. She had opted to leave the college and joined the 4<sup>th</sup> respondent-PGI on 01.07.2014. The petitioner's grievance is that when he sought for return of his original certificates that he had submitted to the 3<sup>rd</sup> respondent-college, the 3<sup>rd</sup> respondent declined to release them acting at the behest of the State that he was bound to pay ₹15 lacs as contained in a bond which every student taking admission in the Government college had to provide.

(2) The petitioner would submit that the petitioner's admission was under 50% All India Quota and there is no clause anywhere in the prospectus requiring ₹15 lakhs to be paid. The relevant provisions relating to bond are contained in Clause 4.7 and that reads as follows:-

“All the candidates selected under 40% quota for various PG courses will have to submit their bond (complete in all respect) as per Punjab Govt. notification at the time of reporting with the institution concerned for submission of fee at the time of joining, failing which their fee/joining will not be accepted. The

specimen copy of bond to be submitted is attached as Annexure N. The candidates will attach the attested copy of proofs of the ownership of property which is being pledged by the sureties. The bond should be attested by the Executive Magistrate. The incomplete bond will not be accepted at all.”

(3) The contention is that this clause would be applicable only for 40% quota for students of the State and cannot apply to a person such as the person who claimed admission on the 50% All India Quota. There is, however, yet another clause which is applicable to persons coming within the 40% State quota as well as the All India Quota by virtue of a notification issued by the Government of Punjab on 23.12.2013. That notification applies the requirement of bond not only from the 40% State Quota but also from the persons of the All India Quota. The relevant clause under the notification issued by the Government reads as under:

“IV. **For 40% & All India Quota candidates** Candidates selected in All India Quota will be considered at par with 40% state quota candidates. They will get fixed emoluments/stipends as determined by the Government from time to time for the course period of 3 years subject to the following conditions:-

The candidate is to submit a bond of ₹15 lacs to serve the Government of Punjab for a period of three years after completion of PG. This clause will not be applicable in case the offer is not given by the Government of Punjab within a period of one year of passing of the postgraduate examination.

- i. The candidate will inform the Government of Punjab that he has passed the postgraduate examination.
- ii. Failure to serve the Government of Punjab for a period of three years will lead to deposition/recovery of bond money to the Government of Punjab i.e. ₹15 lakhs.”

(4) The counsel would contend that this can apply only in two situations: One, when a bond is actually executed in favour of the State and two, that it is a *quid pro quo* for the expenditure to be incurred by the State for providing education in the college and as an expectation for a student to pass out of the postgraduate course to serve within the State of Punjab. The petitioner would contend that no bond was even taken from the petitioner at the time of admission by the college. There is, therefore, no contract which can be enforced by the State. The liability cannot be fastened without a written instrument therefor. The other

objection is that ₹15 lacs must be seen as the amount which is required to be paid by a candidate who enjoyed stipend or emolument from the Government and since the petitioner had been in the college only for less than two weeks, she had not availed of any stipend and obtained no benefit in order that she could be compelled by the department of having to make the payment to the respondent. According to him, there is no consideration involved in the transaction to make the petitioner liable.

(5) To the contention of the petitioner, I would hold that the petitioner could be governed both by the terms of the prospectus and the Government notification issued in the year 2013. The prospectus does not require the furnishing of bond in favour of the Government to All India Quota. What the prospectus omits to do is filled up by notification of the Government that applies the requirement of a bond not only to the State quota students but also to All India quota. If this clause were to be applied by the State to require ₹ 15 lacs to be paid then such an enforcement is possible only if there is a bond. If there is no bond, there is no question of an obligation which does not exist through any instrument in writing. Assuming that such an obligation could arise even without a written instrument, it can be supported only by passing of consideration. That consideration could be the payment of stipend to a candidate that has also not been done admittedly. The question of payment of ₹ 15 lacs or enforcement of the bond against the petitioner, therefore, cannot arise.

(6) There is yet another clause in the notification which is relevant and that is applicable to a case where a candidate once admitted and drops out or leave the postgraduate course. The clause is reproduced as under:-

“18. In case a candidate once admitted, drops out or leave the Post Graduation Degree course in between, he/she shall be debarred for a period of three years for admission to any PG course in the State of Punjab. The University shall display the list of the names and addresses of such debarred persons.”

This clause only prohibits a student who leaves the postgraduate course from seeking admission in any postgraduate course in the State of Punjab. The admission which he has secured at the PGI is not the institute in State of Punjab but in the Union Territory of Chandigarh although it is the capital of the state of Punjab, I cannot apply this clause to the students securing admission in the 3<sup>rd</sup> respondent institute.

(7) The petitioner has secured admission and has attended classes for 15 days. The consideration for the bond we have already examined is only for the stipend that is paid by the State and the services by the student on completion of the course at future date. The petitioner has also paid ₹40,000/- as tuition fee. The amount of ₹40,000/- which has been paid already by the petitioner will stand forfeited. However, there shall be a mandate against the respondents for return of all the original documents which she had submitted along with transfer certificate from the college within a period of four weeks from the date of receipt of copy of this order.

(8) The writ petition is allowed on the above terms.

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A. Aggarwal

*Before Ms. Jaishree Thakur, J.*

**THE PUNJAB STATE AND ANOTHER** —*Petitioner*

*versus*

**EX.CONSTABLE SARABJIT SINGH** —*Respondent*

**RSA No.1575 of 1997 (O&M)**

November 28, 2014

***Punjab Police Rule, 1934 – Rl. 12.21 – Discharge from service – Respondent a police constable on probation – simpliciter discharged from service without regular inquiry on ground that he did not attend work and was away from duty on certain occasions – Held, that respondent on probation –remained absent from duty and was served with punishment of censure twice – Despite censure, he again remained absent from duty – Period of probation gives time and opportunity to employer to watch work and efficiency of employee – Respondent was not found suitable for post – Dispensation with his services was just and proper.***

*Held*, that before the competition of the three year period of probation he was discharged from service as the authorities did not find him suitable to be retained in service. The record plainly reveals that the Constable remained absent from duty and it was on this count, he was served with punishment of censure twice. Despite the censure he again remained absent from duty. As has been held in *Sher Singh's*