

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.9718 of 2025

Date of decision: 18.06.2025

Sanjay Kumar.

...Petitioner.

Versus

State of H.P. & Ors.

...Respondents.

Coram:

Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?¹

For the petitioner : Mr. Dilip Sharma, Senior Advocate with Mr. Om Pal and Mr. Sahil Dixit, Advocates.

For the respondents : Mr. Anup Rattan, Advocate General with Mr. L.N. Sharma, Additional Advocate General.

Jyotsna Rewal Dua, Judge

Petitioner is serving as Assistant Professor in General Medicine in Pt. JLN GMC & H Chamba. He appeared in NEET Super Specialty Entrance Examination held on 29.03.2025. The result thereof was declared in April 2025. Petitioner secured a place in the merit list. During second round of counselling, he was allotted an All-India quota seat for DNB-SS-Cardiology course. A provisional allotment letter was issued to him on 10.06.2025.

On 12.06.2025, the petitioner through proper channel represented to respondent No.2 for grant of No

Objection Certificate ('NOC') for pursuing 3-year DNB-SS-Cardiology course. According to the petitioner, he did not hear any response from the respondents. The last date for completing codal formalities for seeking admission to the course is stated to be 19.06.2025, i.e. tomorrow. In this background, the petitioner tendered his resignation to the respondents on 14.06.2025. The delay on the part of the respondent in taking a prompt decision on the aforesaid request of the petitioner compelled him to institute this writ petition, seeking following substantive reliefs:-

- "i). That if during the pendency of the present writ petition, the petitioner's request for NOC is rejected or his request for accepting his resignation is rejected, in that event such rejection may kindly be quashed;*
- ii). That the respondent department may kindly be directed to grant study leave/extra-ordinary leave without pay to the petitioner for undergoing DNB-SS-Cardiology at Dr. RPGMC, Tanda;*

Or in the alternative, a direction may be issued to the respondent department to accept his resignation dated 14.6.2025 forthwith, with a further direction to relieve him from his present assignment latest by 17th June 2025 evening, so as to enable him to join the said course well within time;"

2. The matter was taken up on 17.06.2025, when learned Senior Counsel for the petitioner submitted that the issue involved in the instant petition was also involved in ***Deepanshu Dhiman vs. State of Himachal Pradesh***². A

² CWP No.4319 of 2025 decided on 27.03.2025.

copy of the said decision was placed on record. In the aforesaid case, the petitioner therein had applied for post of Assistant Professor (Anesthesia) (SC) pursuant to applications invited by PGIMER Chandigarh. She participated in the selection process under a provisional NOC granted in her favour by the respondent-State and emerged successful in the process. The petitioner therein submitted her technical resignation to the Secretary (Health), Government of Himachal Pradesh. Her request was rejected. She thereafter tendered unconditional resignation. No decision was taken by the Competent Authority on the unconditional resignation tendered by the petitioner therein. Consequently, she instituted CWP No.4319 of 2025. Stand of the respondent-Health Department was that petitioner's unconditional resignation had also been rejected on ground of paucity of doctors and shortfall in the faculty in the event of acceptance of resignation tendered by the petitioner (therein) which would attract penalties to the concerned college on account of not fulfilling guidelines/parameters laid down by the National Medical Council. This stand was rejected by the Court, *inter alia*, keeping in view the orders passed by the Division Bench on 27.12.2024 in LPA No.450 of 2024 (*Ajay Kumar Chauhan vs. State of H.P. & Ors.*) and

on 09.01.2025 in LPA No.25 of 2025 (*Dr. Trilok Chand vs. Union of India & Anr.*). Relevant portion of the judgment reads as under:-

“9. Resignation of an employee cannot be rejected on the ground set up by the respondent-State. Every individual has a right to progress in his/her career. Since petitioner stands selected against the post of Assistant Professor in a premier institution i.e. PGIMER, she has every right to tender her resignation from her previous institution, enabling her to join new institution. To meet the shortfall, if any, of the faculty, respondent-State has many options. Post offered to be vacated by the petitioner can be filled up by way of direct recruitment, contract or even by promotion in terms of Recruitment & Promotion Rules.

10. In similar facts and circumstances, Division Bench of this Court in LPA No. 450 of 2024 titled *Ajay Kumar Chauhan v. State of Himachal Pradesh*, rejected the plea of shortage of staff and directed the respondents to accept the resignation forthwith. It would be apt to take note of following paras :

“8. On 17.12.2024, Co-ordinate Division Bench had observed as under:-

“The resignation tendered by the appellant has been rejected by the State Government on the ground that there is an acute shortage of Medical Officers (Specialists) in the State. However, we find that the same by itself cannot be a reason enough which can bind an unwilling employee to serve the State. Therefore, the respondent-State to explain its stand on the next date of hearing.”

9. Thereafter, the applicant/appellant has filed this application on 26.12.2024 with the submission that his resignation be accepted as a unconditional resignation, as he is unwilling to serve with the present employer as he has been offered appointment in AIIMS Bilaspur and he wants to excel his career in future.

10. In view of this application, learned Additional Advocate General was directed to have instructions in this regard.

11. Today, learned Additional Advocate General has expressed his inability to have instructions because of closure of offices on account of death of Ex-Prime Minister Dr. Manmohan Singh.

12. Learned Counsel for appellant has submitted that yesterday offices were open and delay in adjudication of matter would hamper his future causing irreparable loss to him as AIIMS Authority may withdraw the offer of appointment.

13. In the aforesaid facts and circumstances, this application is taken for consideration and considering the averments made in application and the submissions made on behalf of parties, the applicant/appellant is permitted and directed to submit his unconditional resignation to the Principal Secretary (Health) to the Government of Himachal Pradesh, on or before 30.12.2024 and in such eventuality, such resignation shall be accepted by the concerned Authority on the very same day, subject to final outcome of present appeal and thereafter, applicant/appellant shall be at liberty to join in AIIMS Bilaspur or wherever he intends to join."

11. In the aforesaid Order, Hon'ble Division Bench has categorically held that in case an employee is not willing to serve the department, he cannot be forced to do so.

12. Yet in another case, Hon'ble Division Bench of this Court vide order dated 9.1.2025, in LPA No. 25 of 2025, titled *Dr. Trilok Chand v. Union of India and Anr.*, has deprecated the action of the respondents in denying NOC to the petitioner therein, who wanted to apply for post of Assistant Professor ENT in AIIMS Bilaspur. In the aforesaid case, Division Bench of this Court categorically ruled that shortfall of vacancy cannot be a valid ground for the State to deny NOC.

13. Leaving everything aside, once there is nothing to suggest that while joining at Dr. Yashwant Singh Parmar Medical College Nahan, petitioner had not furnished any kind of bond or undertaking to serve the State for any specific period, respondent has otherwise no right to reject the resignation tendered by the petitioner, who now for advancement of her career wants to join a premier institution.

14. Consequently, in view of the above, this court finds merit in the present petition and accordingly, same is allowed. Order dated 17.3.2025 passed by the Secretary (Health) to the Government of Himachal Pradesh (Annexure P-6) and communication dated 26.3.2025, thereby rejecting the unconditional resignation of the petitioner are quashed and set-aside. Resignation tendered by the petitioner (Annexure P-5) shall be deemed to have been accepted. Respondent is directed to relieve the petitioner immediately. Petitioner shall be entitled to all service benefits arising out of her service with the respondent in accordance with law. In the aforesaid terms, present petition is disposed of alongwith pending applications, if any."

It has not been disputed by the respondents that the aforesaid decision has been implemented. Ms.

Deepanshu Dhiman stands relieved from her duties on technical resignation from the concerned post. It has also not been disputed that respondents have implemented the directions issued in the order dated 27.12.2024 in LPA No.450 of 2024 by accepting the unconditional resignation of Dr. Ajay Kumar Chauhan, appellant therein.

It is also an admitted fact that pursuant to the order dated 09.01.2025 passed in LPA No.25 of 2025, the respondent-Health Department has granted NOC to Dr. Trilok Chand, appellant therein.

3. Taking note of above, following order was passed in this matter on 17.06.2025:-

“Notice. Mr. Manish Sharma, Advocate, appears and waives service of notice on behalf of the respondents.

The matter was taken up in the forenoon session when in view of urgency made out in the petition, learned Additional Advocate General was directed to have instructions. When the matter was next taken up in afternoon session, learned Additional Advocate General sought a day’s more time.

*List the matter on **18.06.2025** to enable the respondents to place on record their stand.”*

4. When the matter was taken up today, the learned Advocate General placed on record the order dated 17.06.2025 passed by respondent No.1 rejecting prayer of the petitioner for grant of NOC/acceptance of his resignation

‘in the interest of Medical College Chamba and public at large’.

At this stage, learned Senior Counsel for the petitioner has placed on record copy of decision rendered in ***Dr. Pankaj Sharma vs. State of Himachal Pradesh & Ors.***³. In the aforesaid case, the petitioner’s grievance was against respondents’ refusing issuance of NOC in his favour for pursuing DNB course. The petitioner (therein) was a bonded candidate. After taking note of previous decisions referred to above, it was directed as under:-

“20. Though in the case at hand, respondents, despite sufficient opportunities, has failed to accept the first offer give by the petitioner, but in large public interest, this Court is of the view that in case his first offer i.e. deposit of Rs.40,00,000/- with further undertaking that after completion of Super Specialty Course, petitioner shall not only join State of Himachal Pradesh as Super Specialist but would also complete his remaining bond period of PG Course, no prejudice shall be caused to the respondents rather public at large would be benefited at later stage. Petitioner, who has come present in Court, undertakes before this Court that in case NOC, as prayed for, is granted to him, he shall not only deposit Rs.40,00,000/- within a period of one week, but would also serve the State of Himachal Pradesh as Super Specialist after his having completed Super Specialty Course from the institution concerned for five years in lieu of the remaining bond period and he further will avail extra ordinary leave without pay for the duration of course, failing which, the afore bond amount shall stand forfeited by the respondents-State. He further states that he will not claim any interest upon the bond amount, which would become refundable to him after serving the remaining bond period. His statement to this effect is taken on record.

³ CWP No.9235 of 2025 decided on 17.06.2025.

He has been apprised of the fact that in case he fails to honour the undertaking given before this Court, he would not only render himself liable for penal consequences but would also invite contempt proceeding and in addition to afore bond money deposited by him shall also be forfeited, which otherwise in the event of his joining back shall be returned to him after completion of bond period but without interest.

21. Consequently, in view of detailed discussion as well as law taken note hereinabove, this Court finds merit in the present petition and accordingly, the same is allowed. Impugned Order dated 26.05.2025 (Annexure P-6) is quashed and set aside. Respondents are directed to issue No Objection Certificate as well as Original MBBS Degree by 12:00 noon tomorrow (18.06.2025), enabling him to join Super Specialty Course in the institution concerned subject to his furnishing amount of Rs. 40,00,000/- within a period of one week in the bank account of the Director Health Services, details wherein shall be furnished by the respondents to the petitioner and furnishing copy of undertaking given to this Court. Pending applications, if any, stand disposed of.”

Learned Senior Counsel for the petitioner submitted that he is under instructions to state on behalf of the petitioner that petitioner is willing to furnish a written undertaking within a week, in case No Objection Certificate is granted to him by the respondent-Health Department and he is permitted to avail extraordinary leave without pay for the aforesaid 3-year DNB-SS-Cardiology course, he would serve the State of Himachal Pradesh as Super Specialist for 5 years after completion of aforesaid course from the concerned institution.

Based upon this submission, learned Advocate General was directed to have instructions from the respondents. When the matter was taken up after some time, learned Advocate General apprised that he is now under instructions from the respondent-Secretary (Health) to the Government of Himachal Pradesh to state that respondent-Health Department is willing to give No Objection Certificate to the petitioner as also the extraordinary leave without pay for 3-year DNB-SS-Cardiology course during the course of the day today with the condition that petitioner will furnish his written undertaking to the Court within a period of 1 week from today that after completion of the course, he will serve the State of Himachal Pradesh as Super Specialist for 5 years.

5. In view of the stand now taken by the parties, this writ petition is disposed of with directions to respondents/Competent Authority to issue No Objection Certificate as also sanction/approval for extraordinary leave without pay in favour of the petitioner for his undertaking 3-year DNB-SS-Cardiology course by 5:00 PM today. Petitioner's original MBBS Degree be also returned to him to enable him to take admission in the course.

The petitioner shall furnish his written undertaking before the Court in this petition within one week from today that he would render his service to the State of Himachal Pradesh as Super Specialist after completing the DNB-SS-Cardiology course, for five years. It is made clear that in case the petitioner would fail to honour the aforesaid undertaking, he would not only render himself liable for penal consequences but would also invite contempt proceedings.

Learned Advocate General to communicate about passing of this order to the concerned quarter for its immediate compliance.

List for the purpose of compliance on 30.06.2025.

18th June, 2025
(Pardeep)

Jyotsna Rewal Dua
Judge