

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.6055 of 2023

(This is an application under Article 226 and 227 of the Constitution of India)

Dr. Tapa Prakash Behera and others ***Petitioners***

-versus-

State of Odisha and another ***Opposite Parties***

For Petitioners : ***M/s. B.S. Tripathy-1, A. Tripathy and A. Sahoo***

For Opp. Parties : ***Mr. R.N. Mishra, learned Addl. Govt. Advocate***

CORAM:
JUSTICE A.K. MOHAPATRA
JUDGMENT

Date of hearing : 17.03.2023 | Date of Judgment : 21.03.2023

A.K. Mohapatra, J.

1. By filing the present writ application, the petitioners, who are Post P.G. bond doctors in different disciplines and have been posted as Senior Residents at SCB Medical College and Hospital, Cuttack. The Petitioner Nos.1 to 8, who are Post P.G. doctors of 2018-2021 batch and after completion of their Post Graduation have been posted in their respective disciplines of Pathology, General Medicines, O&G, Psychiatric,

Biochemistry, Radiodiagnosis & ENT at SCBMCH, Cuttack for the 2nd year up to 30.06.2023 by Order No.16498 dated 27.07.2022. Pursuant to the aforesaid order, the Petitioner Nos.1 to 8, have joined in their respective posts by 30.07.2022 and have been continuing as such till date. So far Petitioner Nos.9 to 14 are concerned, they are Post P.G. Doctors of 2019-2022 batch and after successfully completing their Post Graduation, have been posted in their respective disciplines at SCBMCH, Cuttack for the 1st year up to 30.06.2023 by Order No.16503 dated 27.07.2022. Pursuant to the aforesaid order dated 27.07.2022, they have joined in their respective posts by 30.07.2022 and have been continuing as such till date.

3. Government of Odisha, Health and Family Welfare Department through its Resolution No.3418 dated 03.02.2017 introduced a Policy for execution of agreement in the shape of Bond with the objective to retain the pass out Doctors(PG pass out Doctor) and to utilize their services in the larger interest of the people of the State. As per the said bond condition, such P.G. pass out doctors are required to execute bond with an undertaking supported by an affidavit to serve under the Government of Odisha for two years immediately after completion of P.G.

In view of the policy decision of the Government with regard to accommodating P.G. pass out Doctors to strengthen Trauma Care

Facilities in the State, a Notification No.25795 dated 16.10.2019 was published and in which, it was decided that those P.G. pass out Doctors shall be deployed for a period of two years as per bond condition by the Government by creating Additional Senior Residents or Tutor posts in Government Medical Colleges on rotation basis for a period of one year. Furthermore, for such experiences in the concerned discipline, they are entitled receive experience certificates as Senior Residents which is to be issued by the Dean and Principal of the Medical/Dental Colleges where they have worked.

4. While the petitioners were continuing to discharge their duties as Senior Residents for the 1st year on rotation, the Opposite Party issued Notification dated 16.12.2022 communicating the decision of the Government for placement of Post PG Doctors to fulfill their Bond Conditions on counseling basis. While this was so, the Director, ME&T without resorting to counseling procedure and ignoring its own decision which was communicated under Annexure-5, i.e. Order No.3196 dated 24.02.2023 decided with an undue haste to deploy the petitioners of 2018-21 batch and 2019-22 batch at GMCH, Kalahandi. Furthermore, it has been pleaded in the writ application that notwithstanding the order dated 24.02.2023, the deployment of the petitioner vide Order dated

24.02.2023 has not been given effect to so far and the petitioners are continuing at their present place of posting.

5. It has been stated in the writ application by the petitioners that the Opposite Parties while passing the impugned order under Annexure-5 have completely ignored the policy decision under Annexures-1, 2 and 4. Moreover, the Opposite Parties are well aware of the fact that the petitioners are continuing in their 2nd year and 1st year rotation of Post P.G. Bond Doctors and as such, they are likely to continue till 30.06.2023 as per Annexures-3 and 4, yet the aforesaid impugned order was passed by the Opposite Parties which has caused prejudice and inconvenience to the petitioners. Therefore, it has also been pleaded that the impugned order under Annexure-6, so far it relates to the petitioners, is liable to be quashed and the petitioners be permitted to continue at their present place of posting till 30.06.2023.

6. Mr. Tripathy, learned counsel appearing for the petitioners submitted that the impugned orders are illegal, arbitrary and the same are outcome of highhandedness of the Opposite Parties-authorities. He further contended that vide resolution dated 03.02.2017 under Annexure-1, the State Government prepared and published a guideline by taking a policy decision to the effect that after completion of the P.G. Course in any Government Medical Colleges, the passed out P.G. Doctors from

such Government Colleges have to serve in any health institution of the State for two years. It has also been stipulated in the bond that after completion of two years of service as per bond provision, the direct as well as in-service doctors will be released from the bond condition. He further contended that the impugned order dated 24.02.2023 under Annexure-6 is nothing but a transfer order in the garb of deployment and that the same is not permissible under the law, and moreover, as in the event of transfer the petitioners are to get additional remuneration of Rs.10,000/- and to avoid payment of such remuneration order at Annexure-6 has been passed. He also submitted that the impugned order under Annexure-6 is also contrary to the policy decision of the Government under Annexures-1, 3 and 4.

7. Learned counsel for the petitioners further referring to the resolution dated 16.10.2019 under Annexure-2 submitted that the candidates after successful completion of P.G. study from the year 2020 were to be deployed in Medical Colleges as in a Specialist in the periphery hospital of the State on rotation basis for a period of one year each in Medical College and periphery. By drawing attention of this Court to Annexure-2, he further contended that the DMET, Odisha prepared a list of such candidates preferably in the month of July or August when majority of P.G. students complete their P.G. Course with

the help of Post P.G. placement committee. Similarly, by referring to order dated 27.07.2022 under Annexure-3, learned counsel for the petitioners also argued that the petitioners were deployed/posted to the places/institution mentioned against the name of each one in the list till 30.06.2023 as per the condition of the bond and pursuant to the resolution dated 16.10.2019 under Annexure-2. Accordingly, the petitioners joined in duty by 30.07.2022. However, before completion of one year period, the impugned order under Annexure-6 was passed on 24.02.2023 by deploying the petitioners as Senior Residents at GMCH, Kalahandi for a period of one year. He further submitted that the impugned order under Annexure-6 has been passed in violation of Annexures-1, 2 and 4, as such the same is unsustainable in law.

8. Mr. Tripathy, learned counsel for the petitioner additionally submitted that vide notification dated 16.12.2022 under Annexure-5, an attempt has been made by the Government to unilaterally change bond condition. He further submitted that vide notification dated 16.12.2022, the Government took a policy decision with regard to principles to be adopted for placement of Post P.G. Bond doctors to fulfill their bond condition. As per the said policy decision, the placement of the Post PG Bond doctors shall be made on counseling basis by taking into consideration their needs. He further argued that while the order passing

the impugned order under Annexure-6, the Opposite Parties have not followed the policy decision vide notification dated 16.12.2022 under Annexure-5. It was also alleged that before passing the transfer/deployment order under Annexure-6, the Opposite Parties have not taken resort to counseling process as has been prescribed in the notification under Annexure-5. In such view of the matter, learned counsel for the petitioners would further argue that since the impugned order under Annexure-6 has been passed in violation of the Policy decision under Annexure-5, therefore, the deployment / transfer order under Annexure-6 is liable to be quashed as the same is unsustainable in law.

9. The present writ petition was listed for admission and interim order on 06.03.2023. After hearing the learned counsel for the petitioners as well as learned Additional Government Advocate for the State, this Court as an interim measure in I.A. No.2648 of 2023, directed that the petitioners shall not be relieved from their present place of posting. Further, the petitioners, who have already been relieved may be allowed to continue in their present place of posting until further orders. Thereafter, the learned Additional Government Advocate for the State has filed a counter affidavit along with an Interlocutory Application for vacation of interim order dated 06.03.2023. Since the counter affidavit

has been filed, this Court thought it proper to take up the matter for final hearing without wasting time in the hearing of the Interlocutory Application for vacation of interim order filed by the learned Additional Government Advocate.

10. In the counter affidavit filed on behalf of the Opposite Parties, it has been stated that considering the short point involved in the present writ petition, instead of giving reply para-wise, a general counter affidavit has been filed answering the principal issue involved in the present lis. While justifying the order passed by the Opposite parties under Annexure-6, the counter affidavit narrates the background and necessity of passing an order under Annexure-6. It has been stated in the counter affidavit that the Government of Odisha in the Health and Family Welfare Department in order to further boost the health care infrastructure in the State has decided to establish a Government Medical College and Hospital, Bhawanipatna, Kalahandi (in short “GMCH”). Pursuant to the aforesaid policy decision as well as in furtherance of the “Minimum Requirements for Annual MBBS Admissions Regulations, 2020”, the Government of Odisha vide order dated 14.07.2021 granted sanction for the creation of requisite number of posts of Professor, Associate Professor, Assistant Professor, Tutors and Senior Residents etc. in various disciplines in the GMCH, Bhawanipatna, Kalahandi.

Thereafter, the State Government through Directorate of Medical Education and Training, Odisha (in short “the DMET”) approached the National Medical Commission (in short “the NMC”) on 08.08.2022 for grant of “Letter of Permission” to open a Medical College with 100 medical seats for Kalahandi for the academic year 2023-24. Pursuant to the aforesaid request, the NMC, had conducted an inspection on 14.02.2023 and after conducting such inspection vide letter dated 21.02.2023 addressed to the Dean/Principal, GMCH, Bhawanipatna, Kalahandi, they have pointed out certain deficiencies. One of the deficiencies as pointed out by the NMC is “84% deficiency in Resident Doctors”. The NMC further requested to submit the compliance report within a period of seven days.

11. Mr. R.N. Mishra, learned Additional Government Advocate for the State submitted that in compliance to the aforesaid deficiencies pointed out by the NMC and keeping in view the urgency of compliance which was required to be submitted within seven days and considering the fact that the Opposite parties had limited time to submit the compliance and to somehow get the letter of permission from the NMC, were left with no other option but to pass the order dated 24.02.2023 under Annexure-6. He further contended that the order dated 24.02.2023 was issued in public interest and keeping in view the expediency to operationalise the

GMCH, Bhawanipatna, Kalahandi. Mr. Mishra, learned Additional Government Advocate further contended that the Opposite Parties while passing the impugned order under Annexure-6 have not committed any illegality at all. Moreover, he contended that the order under Annexure-6 is absolutely in public interest. Furthermore, by passing the impugned order under Annexure-6, the Opposite parties have not violated the conditions as envisaged in the bond under Annexure-1. He further contended that the bond under Annexure-1 allows freedom to the Opposite Parties to deploy the Post PG Bond Doctors in any health institution of the State for two years.

12. Mr. Mishra, further emphatically argued that the condition in the bond as per resolution under Annexure-1 is an absolute and unconditional one. Condition No.1.c of the bond as has been provided under Annexure-1 leaves no room for doubt that it is within the absolute discretion of the Opposite Parties to retain the P.G. Pass out Doctors for a period of two years and to deploy them in any of the health institution of the State. However, the same is subject to a period of two years from the date of the joining of the candidates.

13. Referring to the counter affidavit, learned Additional Government Advocate contended that to fill up the post which have been created vide order dated 14.07.2021 as per Annexure-R/1, the Health and Family

Welfare Department, Government of Odisha through DMET, Odisha has already initiated steps on 14.03.2023 to advertise the recruitment of Senior Residents/Tutors in Government Medical Colleges and Hospital, Bhawanipatna, Kalahandi. In this regard, he further contended that the Opposite Parties are serious and taking timely steps to ensure that the vacant posts of Senior Residents/Tutors GMCH at Kalahandi shall be filled up by following open-recruitment procedure by 30.06.2023.

14. So far as petitioners are concerned, learned Additional Government Advocate submitted that as per resolution of the Health and Family Welfare Department dated 16.10.2019 read with bond conditions under Annexure-1 at the bond executed by the petitioners for a period of two years, deployment / posting of Post of P.G. Doctors during bond period is being regulated on the basis of the bond conditions and as such out of two years they are required to serve one year each on a Government Medical College and Hospital and periphery hospitals. Therefore, since the bond period of the petitioner nos.1 to 8 would come to an end on 01.07.2023 and the petitioner nos.9 to 14 likely be revised again before 30.06.2023, no serious prejudice would be caused to the petitioners. Additionally, it was also contended by learned Additional Government Advocate that the temporary posting of the petitioners at GMCH, Bhawanipatna, Kalahandi is in larger public interest and in

compliance to the deficiencies pointed out by NMC. Moreover, the NMC team is expected to visit the GMCH, Bhawanipatna, Kalahandi any time soon. In such view of the matter, it was contended by learned Additional Government Advocate for the State that any interference by this Court with the post/deployment order under Annexure-6 would cause serious prejudice to the interest of the public at large and over-whelming public interest and aspiration of the people living in around Bhawanipatna in operationalizing of the GMCH at the earliest would be seriously affected.

15. Next, learned Additional Government Advocate submitted that the deployment order under Annexure-6 has been passed strictly inconsonance with the bond conditions and the terms and conditions stipulated in various resolutions of the H & FW Department, Government of Odisha. In course of his argument, learned Additional Government Advocate referred to the conditions of the bond as envisaged in Annexure-1. He further led emphasis on the words “**Any health institution of the State**” for a period of “**for two years**”. Accordingly, he further contended that the words used in the bond as is evident under Annexure-1 cannot be given a limited or restricted interpretation to only mean one Medical College over-looking the importance of other Medical Colleges run by Government and ignoring the public interest involved in it. As such, it was argued that the order under Annexure-6 has been

passed in terms of the condition contained in the bond consciously executed by the petitioners with the Government. Further referring to resolution dated 21.04.2021, learned Additional Government Advocate would argue that in Post P.G. Doctors could be posted at any Medical Colleges of the State Government temporarily to meet the exigency. He also referred to the following paragraphs of resolution dated 21.04.2021, it has been extracted hereunder:-

“.....The Senior Residents and the post PG Bond doctors posted in a Medical College can be allowed to work in other Medical Colleges temporarily in exigency but shall not appear before MCI/NMC during assessment in the deputed Medical College....”

16. Mr. Mishra, learned Additional Government Advocate further argued that by issuing order under Annexure-6 by deploying the petitioners GMCH, Bhawanipatna, Kalahandi, the Opposite Parties have not violated any of the resolution of the Government including under Annexures-1, 2 and 5. So far resolution dated 03.02.2017 under Annexure-1 is concerned, it is argued that the same applies to the Government to deploy Post P.G. Bond doctors at any health institution of the Government for two years. Similarly, referring to resolution dated 16.10.2019, it was contended that there is no mandate for Post P.G. Bond doctors to undergo /attend Trauma Care Facility duty. Moreover, since Trauma Care Facilities is available at GMCH, Bhawanipatna, Kalahandi,

the petitioners can very well undergo/attend Trauma Care Facilities duty at the said institution and the DMET, Odisha has been authorized by the Government to issue experience certificate to such Post P.G. Bond doctors. As such, there is no violation of resolution dated 16.10.2019. Finally, with regard to notification dated 16.12.2022 under Annexure-5, it was emphatically submitted by learned Additional Government Advocate that the same is not applicable to the petitioners as in view of the terms of the said notification, the same will be applicable to the Post P.G. doctors who will be completing P.G. Education in the year 2023 and thereafter. As such the allegation that the policy decision under Annexures-1, 2 and 5 have been flouted by the Opposite Parties, is absolutely baseless and completely misconceived.

17. With regard to the contentions raised by leaned counsel for the petitioners that this Court has passed interim order protecting the petitioner in W.P.(C) No.2367 of 2022 and W.P.(C) No.10 of 2023 and that such interim order is still in operation, it was contended by learned Additional Government Advocate that such cases are clearly distinguishable from the facts and circumstances involved in the present writ application. He further submitted that none of the above cases involve the over-whelming public interest of operationalizing Medical College as involved in the present writ application.

18. Having heard learned counsel appearing for the petitioners as well as learned Additional Government Advocate for State-Opposite Parties and upon careful perusal of the pleading submitted by the respective parties, and upon consideration of the contentions raised by learned counsels, this Court is of the prima facie view that the issue involved in the present writ application is as to whether the petitioners, who are Post P.G. doctors, could be posted at different Medical Colleges by the Opposite Parties as has been done in respect of the petitioner under Annexure-6 to the writ application? In reply to the said question, this Court deems it proper to examine the conditions contained in the bond executed by the petitioners with the Government. The background facts for execution of such bonds, has already been narrated hereinabove. Therefore, the same need not be repeated here. Moreover, the petitioners have not disputed the execution of the bond as well as the terms and conditions contained in the bond. Hence, the relationship between the Government and the petitioners is to be assessed taking into consideration the conditions in the bond, which is evident from Annexure-1.

19. On cursory look at the conditions contained in Annexure-1, this Court observes that the condition No.1.c of the bond provides that after completion of the P.G. Course in any Government Medical College, the

pass out P.G. Doctors are required to serve **“in any health institution in the State for a period of two years”**. Moreover, the resolution under Annexure-1 further provides that after completion of two years of service as per the bond provision, the Post P.G. doctors will be released of the bond condition. On a plain reading of the aforesaid condition in the bond, this Court is of the considered view that there is no ambiguity and the same does not leave any room for interpretation with regard to the fact that after completion of the P.G. course in any of the Government Medical Colleges, pass out doctors like the petitioners are required to serve for a period beyond two years under the State Government in any health institution of the State. Further language employed in the bond does not restrict the number of health institutions where the petitioners can be deployed during the aforesaid bond period of two years. In such view of the matter, this Court has no hesitation in coming to a conclusion that the Opposite Parties are well aware of their authority to deploy the petitioners or similarly placed doctors in any of the Government Medical Colleges as has been done in the present case during the aforesaid bond period.

20. So far the background of the present case is concerned, the decision of the Opposite Parties in deploying the petitioner at GMCH, Bhawanipatna, Kalahandi is justified considering the public interest

involved in operationalising the GMCH, Bhawanipatna, Kalahandi. For the said purpose, the Opposite Parties were required to engage adequate number of doctors as per the applicable rules to get the certificate from the NMC to operationalize the Government Medical Colleges and to obtain the much desired, permission from the NMC to open 100 seated Medical College in the district of Kalahandi. Since the NMC had pointed out certain deficiencies with regard to deployment of Senior Residents/Tutors, the Opposite Parties in compliance to the said deficiencies have taken a decision to temporarily deploy/transfer the petitioners to GMCH at Kalahandi so that they will get the required permission from the NMC to start the Medical College, which is in larger public interest. As such, this Court is of the considered view that the Opposite Parties while passing order under Annexure-6 pending regular recruitment of Senior Residents/Tutors, which has already been advertised and the process is on to recruit regular doctors in such posts. Finally, this Court found no fault in the action of the Opposite Parties in issuing the deployment order under Annexure-6. In such view of the matter, this Court is not inclined to interfere with the order under Annexure-6.

21. However, it is also equally important to reiterate here that the Opposite Parties are also equally bound by the terms and conditions of

the bond, which has been executed with the petitioners. Therefore, they are also directed to act strictly in accordance with terms and conditions provided in the bond. Therefore, the Opposite Parties are directed that under no circumstances, the period of deployment of the petitioners shall exceed the bond period or shall be extended in violation of the resolutions issued by the Government in this regard. It is further directed that the petitioner Nos.1 to 8 be released from Government service, unless they want otherwise on completion of bond period w.e.f 30.06.2023, and so far petitioner Nos.9 to 14 are concerned their cases may be reviewed on or before 30.06.2023 keeping in view the Government resolutions applicable to them. It is further directed that the petitioner Nos.9 to 14 shall also be released after completion of bond period of two years.

22. Further taking into consideration the submissions made by learned counsel for the petitioners that the doctors, who are posted at Kalahandi be paid the additional allowances as is being paid to other government servants, this Court on careful consideration of the submissions made by learned counsel for the respective parties, also directs that the Opposite Parties shall consider payment of additional allowances/transfer allowances as is due and admissible to regular Doctors/Government employees on their posting in Kalahandi district.

23. Furthermore, it was brought to the notice of this Court that despite the order under Annexure-6, the petitioners are still continuing at their present place of posting. Moreover, by virtue of the interim order dated 06.03.2023, the petitioners were protected by the interim order passed by this Court. Many things were argued by either side with regard to the relieve from service of the petitioners. However, this Court directs that the relieve orders, if any, issued earlier shall be cancelled and fresh relieve orders shall be issued by the Opposite Parties. If the petitioners are continuing at their present place of posting then the same shall be treated as on duty at the present place of posting.

24. Before parting finally, this Court would like to observe that the Opposite Parties are required to be more serious and act with promptitude when it comes to taking any policy decision in the Health Sector of the State. In the present case, it was observed that although a decision was taken way back on 14.07.2021, granting sanction for creation of requisite number of posts Professors, Associate Professors, Assistant Professors, Tutors, Senior Residents etc. in GMCH, Bhawanipata, Kalahandi, no steps whatsoever was taken to see that such posts are filled up by selecting and recruiting eligible doctors to such posts. It is further observed that when the NMC visited and submitted its report by showing discrepancies, the Opposite Parties woke up from a deep slumber and

hastily took a decision to transfer Senior Residents from SCB Medical College and Hospital, Cuttack to GMCH, Kalahandi. Such a hasty decision is bound to cause disruption and affect the functioning at the SCB Medical College and Hospital, Cuttack which is undoubtedly the leading hospital of the State having very large foot fall every day. Moreover, the last minute deployment and steps for recruitment through advertisement from open market creates a very poor image of the State Government and the steps taken in the present case is no less than the desperate attempts made by private medical colleges to get approval / permission from MCI/NMC. This Court would not have made this observation had it not been pertaining to the health care sector of the State. Therefore, the Opposite Parties-authorities, particularly, the Opposite Party No.1 is expected to be more careful in future in such type of matters.

25. With the aforesaid observation/direction, the writ petition stands disposed of.

(A.K. Mohapatra)
Judge