Before Anil Kshetarpal, J.

YOGESH KUMAR VASHISHT—*Petitioner*

versus

STATE OF HARYANA AND OTHERS —*Respondents*

CWP No. 23838 of 2019

February 23, 2021

Constitution of India, 1950, Article14, 226 and 227 — Restrictions on right of a government servant to apply for another post till completion of five years of service in present position. Also three months advance notice or three months salary to be deposited in case of resignation before the said period —Held such a restriction is not opposed to public policy and is valid. Qualified employees indulge in job hopping and such clauses are incorporated to curb such practices. Selection of an employee consumes lot of time and involves expenditure by the employer. Resultantly the beneficiaries suffer— Plea of bargaining power between an employee and employer is not acceptable if the employee is highly educated. Petition dismissed — The employee must abide by the terms of the employment letter.

Held that now, the question is whether the present contract involves or implies injury to the person or property of another or is opposed to public policy. Learned counsel has tried to bring this case within the scope of '*opposed to public policy'*. He, while referring to the Article 14 of the Constitution of India, submits that the State is not expected to deprive any person equality before law or equal protection of laws.

(Para 10).

Held that it is well settled that public interest has to be given precedence over private interest. In this case, the restriction is only for a period of 5 years and that also if a member of the faculty is applying for same or an equivalent post. There is no restriction on applying for a higher post in view of the subsequent instructions. The respondents in reply have taken the same stand. Such restriction is only applicable for an initial period of 5 years. By now, it is well known that sometimes qualified persons indulge in job hopping. Such clause has been incorporated to curb such practices. In the present case, Assistant Professor is appointed to teach students of Medical College. It is also acknowledged that selection of a public servant consumes a lot of time

and involves a lot of expenditure for theemployer. If the teacher, who has been appointed after following a long process is allowed to hop from one job to another, immediately after joining, then the students are likely to suffer.

(Para 11)

Held that after having given serious thought, this Court is of the considered view that such clause does not offend Article 14 of the Constitution of India or Section 23 of the Indian Contract Act. No doubt, that the petitioner's service is not only governed by the contract but is also regulated by the rules framed under proviso to Article 309 of the Constitution of India.

(Para 12)

Held that the employee has no other option but to sign on dotted lines.It may be noted here that the petitioner is highly qualified and has been appointed as an Assistant Professor at such a young age. The petitioner, is not an uneducated workman. He is presumed to be well versed with the law. The petitioner after having accepted the terms of appointment, joined in 2017. Thereafter, even before completing his probation period, the petitioner want to go somewhere else on an equivalent post. In these circumstances, once the petitioner has accepted the terms of employment and worked as such for approximately a period of 2 years, cannot be allowed to take a U-turn and assail its correctness.

(Para 16)

Held that this Court has considered the submission, however, finds no merit therein. If the petitioner wants to resign, he has to comply with the rules and terms of the appointment letter. In any case, on careful reading of clause 10 of the appointment letter, it is apparent that an employer has a right to not accept the resignation till an alternative arrangement for a suitable substitute is made so that the studies of the students and health of the patients do not suffer.

(Para 22)

D.S.Patwalia, Sr. Advocate with
B.S.Patwalia, Advocate
for the petitioner

Samarth Sagar, Addl. AG, Haryana
Surinder Gaur, Advocate
for respondent no.3

Keshav P Singh, Advocate

for applicant-respondent no.4

ANIL KSHETARPAL, J.

(1) Through this writ petition filed under Article 226/227 of the Constitution of India, the petitioner calls upon the Court to grant the following substantive reliefs:-

> "(i) A writ for issuance of writ, order or direction in the nature of Certiorari to quash the impugned condition no.9 of the appointment letter dated 25.10.2017 (Annexure P-1) and impugned letter dated 7.8.2019 (Annexure P-5) issued by the respondent no.2 vide which application dated 14.7.2019 (P-3) for the given the No Objection Certificate (NOC) has been rejected, in so far as it pertains to the restrictions on the Teaching Faculty- Group A because the same is without application of mind, irrational, arbitrary, fails to meet it actual objective and unconstitutional for the reasons stipulated in the writ petition.
>
> (ii) issue a writ, order or direction in the nature of mandamus directing the respondent No.2 to give "No Objection Certificate" to the petitioner for appearing in the selection process for the post of Assistant Professor, Department of Forensic Medicine applied under the advertisement No.UHSR/Rectt/5/2019 dated 13.07.2019 (P-2) published by respondent no.3 as the petitioner has been called on 3.9.2019 for scrutiny7 of documents and thereafter on 4.9.2019 for interview."

(2) In the considered view of this Bench, the following question arises for its adjudication:-

> "Whether the State Government/ employer can restrict the right of a Government servant to apply for another post and if so, to what extent?"

(3) The petitioner was appointed as Assistant Professor in the Department of Forensic Medicine in Bhagat Phool Singh Govt. Medical College for Women, Khanpur Kalan, Sonepat vide appointment letter dated 25.10.2017. Clauses 9 and 10 thereof read as under:-

> "9. You will not be allowed No Objection Certificate to apply elsewhere till completion of 5 years of service in this College.

> 10. It your want to resign from this post at any stage, you shall be required to submit three months advance notice or deposit three months salary in lieu thereof or pro-rata amount of the period by which this notice falls short of similarly, if the State Government wants to dispense with your service, you will be given three months notice for the same or an amount equal to salary for three months by-demand draft in advance. However, your resignation will be accepted only after arrangement of a suitable substitute in your place so that studies of the students and patient care doesn't suffer. You will no leave your duty till your resignation is duly accepted by the competent authority."

(4) The petitioner after having joined the respondent-College, applied for the post of Teacher (Assistant Professor) Medical-(Forensic Medicine), pursuant to a recruitment notice issued in the month of July by Pandit B.D.Sharma University of Health Sciences, Rohtak. The petitioner requested for no objection certificate, which was refused by the respondents vide communication dated 07.08.2019. The petitioner filed the writ petition. On 02.09.2019, the respondent-University was directed to provisionally interview the petitioner subject to the final outcome of the writ petition. The petitioner has appeared and scored sufficient marks to be selected.

(5) On notice of motion, the respondents have taken a stand that the clause in the appointment letter is in accordance with law. It has been pleaded that such bar is applicable only if a member of the faculty applies for the same or equivalent post and such prohibition does not apply to the member of the faculty who applies for a higher post. It is pleaded that such bar is applicable only during the Ist 5 years of service.

(6) Heard learned counsel for the parties and perused the paper book. Learned senior counsel representing the petitioner submits that such clause is un-conscionable and therefore, violative of Article 14 of the Constitution of India. He submits that the Hon'ble Supreme Court in ***Central Inland Water Transport Corporation Ltd. and another*** versus ***Brojo Nath Ganguly and another***[1] held that such contract would be opposed to public policy and therefore, not lawful. He further relies upon the judgments passed in ***Dr. Rahul Chawla and another*** versus ***State of Haryana CWP 7411-2017 decided on***

[1] (1986) 3 SCC 156

21.09.2017 and ***Dr. Anjali*** versus ***State of Haryana CWP 24561-2016 decided on 30.08.2018.*** (Annexure P-10 and P-11).

(7) Per contra, Sh. Samarth Sagar, learned counsel appearing for the State of Haryana submits that such clause in the appointment letter is in accordance with the policy of the State and it is not unconscionable. He further submits that this restriction is only applicable for a period of 5 years for the employees who seek appointment on same or equivalent post with the object that a faculty member who has been appointed in a Medical College should work atleast for a period of 5 years. He further submits that there is no restriction if a member of the faculty applies for a higher post. He draws the attention of the Court to the instructions issued by the Govt. of India on 19.02.2018 in this regard. He relies upon judgment passed in ***Son Pal*** versus ***General Manager, Northern Railway, New Delhi and others*** in Civil Writ No. 501 of 1972 decided on 12.02.1973 by the Delhi High Court. He also places reliance on a Division Bench Judgment of the Delhi High Court in writ petition (Civil) 6272 of 2007 ***Sgt.Sachin Kumar Pravin and others*** versus ***Union of India*** and other connected cases decided on 14.03.2008.

(8) Sh. Keshav Pratap Singh, Advocate, has appeared for respondent no.4 and supported the arguments of the learned State counsel.

(9) Now, the stage is set for evaluating the arguments of the learned counsel for the parties. It may be noted here that Section 23 of the Indian Contract Act, 1872, provides that what consideration and objects are lawful, and what are not. It reads as under:-

> **23. What considerations and objects are lawful, and what not**.—The consideration or object of an agreement is lawful, unless— it is forbidden by law; or
>
> is of such a nature that, if permitted, it would defeat the provisions of any law; or
>
> is fraudulent; or
>
> involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.
>
> In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful, is void."

(10) On a careful reading of Section 23, the contracts where the consideration or the object of an agreement is un-lawful or if it is forbidden by law or is of such nature that, if permitted, it would defeat any provisions of any law then such contracts are not enforceable. Similarly, agreements which are fraudulent or involves or implies injury to person or property of another or the court regards it as immoral or opposed to public policy are unlawful. Now, the question is whether the present contract involves or implies injury to the person or property of another or is opposed to public policy. Learned counsel has tried to bring this case within the scope of '*opposed to public policy*'. He, while referring to the Article 14 of the Constitution of India, submits that the State is not expected to deprive any person equality before law or equal protection of laws.

(11) Let us now consider whether such contract is against public policy and therefore, un-conscionable. It is well settled that public interest has to be given precedence over private interest. In this case, the restriction is only for a period of 5 years and that also if a member of the faculty is applying for same or an equivalent post. There is no restriction on applying for a higher post in view of the subsequent instructions. The respondents in reply have taken the same stand. Such restriction is only applicable for an initial period of 5 years. By now, it is well known that sometimes qualified persons indulge in job hopping. Such clause has been incorporated to curb such practices. In the present case, Assistant Professor is appointed to teach students of Medical College. It is also acknowledged that selection of a public servant consumes a lot of time and involves a lot of expenditure for the employer. If the teacher, who has been appointed after following a long process is allowed to hop from one job to another, immediately after joining, then the students are likely to suffer.

(12) After having given serious thought, this Court is of the considered view that such clause does not offend Article 14 of the Constitution of India or Section 23 of the Indian Contract Act. No doubt, that the petitioner's service is not only governed by the contract but is also regulated by the rules framed under proviso to Article 309 of the Constitution of India. However, in the present case, Rule 21 of the Haryana Medical Education Service Rules, 1988, enables the employer to impose special terms and conditions in the order of appointment, if it is deemed expedient to do so. In fact, Rule 21 starts with a non-obstantive provision. Thus, clause 9 as extracted above has been incorporated in exercise of powers under Rule 21.

(13) The judgments relied upon by the learned counsel for the petitioner, are following the judgment of the Hon'ble Supreme Court in ***Central Inland Water Transport Corporation Ltd.*** (supra). On careful reading of the aforesaid judgment, it becomes apparent that the court was examining the clause which enabled the employer to terminate the services of any employee after giving notice for a period of 3 months or salary in lieu thereof. The employees whose services were sought to be terminated were previously employed with a previous Company which was taken over by the Central Water Inland Transport Corporation Ltd. In these circumstances, the Court found that such clause was unconscionable. In the considered view of this Court, the aforesaid judgment has no applicability because in the present case, the employer has only prohibited its employee to seek employment elsewhere on the same/ equivalent post for a period of Ist five years. However, such bar does not apply if the employee applies for better/higher post.

(14) In Dr. Rahul Chawla (supra), the attention of the court was not drawn to the policy decision providing for the restriction applicable for a particular period. The Court noticed that since the State could not show any legal bar and the appointment letter also did not contain any such prohibition, therefore, the Court after relying upon the decision in ***Shiv Charan and others*** versus ***State of Haryana*** CWP 19712 decided on 10.11.2016, allowed the writ petition. This Court has also carefully read the judgment passed in Shiv Charan's case (supra). In the aforesaid case, the attention of the Hon'ble Bench was not drawn to the law on the subject. Thus, the aforesaid judgment cannot be treated as a binding precedent being sub silentio. In Dr. Anjali (supra), the Court after noticing that the Govt. has already withdrawn its instructions on 23.2.2017, allowed the writ petition. As per the instructions dated 23.02.2017, the State had decided to forego such prohibition/restriction on the teaching faculty of medical colleges. However, subsequently, the Govt. issued another set of instructions on 19.02.2018. Therefore, the judgment passed in the case of Dr. Anjali does not espouse the cause of the petitioner. It is relevant to note that in the case of Dr. Ajali (supra), reliance has been placed on ***Dr. Abhijit Ramdass Rochatkar*** versus ***State of Haryana*** CWP-22831-2017 decided on 8.11.2017 and Shiv Charan (supra). In the case of Dr. Abhijit Ramdas Rochajkar, the Court again noticed that the instructions dated 23.02.2017 stands withdrawn.

(15) It may be noted here that there is another judgment in ***Manjit Singh and another*** versus ***State of Haryana*** 14062-2016

decided on 22.2.2017. In the aforesaid judgment, a co-ordinate Bench held that once the employee has accepted the terms of appointment letter and joined, then, he is estopped from the challenging the same. The Court further held that such clause is not unconscionable.

(16) Learned counsel for the petitioner has submitted that the bargaining power between an employee and the State is unequal and therefore, the employee has no other option but to sign on dotted lines. It may be noted here that the petitioner is highly qualified and has been appointed as an Assistant Professor at such a young age. The petitioner, is not an uneducated workman. He is presumed to be well versed with the law. The petitioner after having accepted the terms of appointment, joined in 2017. Thereafter, even before completing his probation period, the petitioner want to go somewhere else on an equivalent post. In these circumstances, once the petitioner has accepted the terms of employment and worked as such for approximately a period of 2 years, cannot be allowed to take a U-turn and assail its correctness.

(17) On careful reading of the judgment passed in Son Pal (supra), it is apparent that the learned Single Bench of Delhi High Court was considering case of a Guard in the Northern Railways, who was selected to the post of a Law Assistant in Northern Railways. He was undergoing punishment. The Court while examining the question held as under:-

> **"**As to the right of a Government servant to apply for other posts and the right of the Government to place restrictions on such applications, the legal position briefly appears to be as follows: The Government servants are a class by themselves separate from other persons who are not Government servants. The equality of opportunity for employment under the State enjoyed by these two different classes may, therefore, be different under Article 16 of the Constitution. When the Government employs a person, it obviously intends to retain him in the post to which he is appointed. If he is allowed to apply for some other post and go away, the Government would have to take the trouble of finding out, another person for section 241 of the Government of India Act, 1935, prohibiting Government servants for applying to other posts except with the permission of the Government. The rules were held to be valid by the Supreme Court in *Birender Kumar Nigam v. The Union of India, (*Writ Petition Nos. 220 to 222 of 1962

> decided by the Constitution Bench of the Supreme Court on 13th March, 1964) which was followed by this Court in *T.P.Mahajan v. Union of India,* (Civil Writ 771 of 1972 decided on 3-1-1973) in which the pros and cons are fully discussed and all the case-law on the subject has been reviewed. The main purpose of insisting on a 'No objection Certificate' before a Government servant is allowed to apply for another post is that a Government servant undergoing a punishment should not be able to escape the suffering of punishment by changing jobs under the same Government. The object of the imposition of the punishment is that it should be suffered by the Government servant. This reason is, therefore, sufficient in law to justify the refusal of a 'No Objection Certificate' by the Government to a Government employee who is undergoing punishment. On the first question, therefore, I find that the Railway was justified in not issuing a 'No Objection Certificate' to the petitioner initially."

(18) On careful reading of the aforesaid extracted para, it is apparent that the Delhi High Court relied upon decision of the Supreme Court in Writ Petition no. 220222 of 1962 decided on 13.03.1964. Unfortunately, the name of the petitioner was wrongly noted. The aforesaid judgment of the Five Judges Bench does not appear to have been reported. This Bench was able to get a copy thereof. On careful reading of the judgment passed by the Five Judges Bench, it is apparent that the Assistant employed in the Central Secretariat had appeared in the competitive examination held by the Union Public Service Commission for recruitment to the Central All India Services not no objection certificate was not issued. There were three separate writ petitions, which came to be decided by the Hon'ble Supreme Court and it was held as under:-

> "Before adverting to the submissions made to us by the learned counsel in support of the petition, it must be pointed out that the learned counsel conceded that if Government had imposed a total ban on persons already in Government service from seeking employment in other Departments or in other cadres by prohibiting them from filing applications for sitting for the competitive examinations, the same could not be challenged as violating any constitutional prohibition. It was admitted that neither Art.14 nor Art. 16 which are the

only Articles of the Constitution which could have any material bearing on the question would be attracted to such a situation.

Learned counsel, however, urged that even if the Government could impose an absolute ban on persons already in service seeking other employment, still if the ban is lifted even partially and Government servants are permitted to compete in a combined competitive examination, then all those permitted to compete and who compete must be treated on the same footing for the reason that these Government servants form part of the same class as those who compete for the examination without being in Government Service and that the rule which lays an embargo against Assistants from competing for and being selected to any post higher than a Class II post, even though they may obtain higher marks than open market candidates was discriminatory under Arts. 14 & 16(1). We feel unable to accept this argument. In the first place, those who are in Government service are afforded the benefit of the relaxation of the rule as to the maximum age for appearing in these examinations and if as a condition of this relaxation certain restrictions are imposed as to the posts to which they might compete it appears to us that there is no unreasonableness involved. A class of persons who are entitled by a valid rule to the benefit of an age concession, whether any individual officer has need to avail himself of this or not, certainly form a separate class and if this discrimination in their favour as compared with the open market candidates could be sustained, they could not justly complain if on this class which is thus distinct from the open market candidates, a restriction which does not apply to the latter is imposed. This apart, Government which employ the Assistants might reasonably feel that these officers having undergone training and experience in that particular service, Government ought not to be deprived of the benefit of their service in the same or related establishments and could therefore legitimately provide by rules that the posts to which they could compete should be only those to which they could aspire to be promoted in the normal course. That this is not a mere theoretical consideration is evident from the contents of the Home

Ministry Notification dated March 14, 1957 to the relevant portion of which we have referred in stating the facts of Writ Petition no.220 of 1963. Besides, the examination for recruitment to the several cadres – the Indian Administrative Service, the Indian Foreign Service etc. need not necessarily have been held as a combined examination but might very well have been by separate examinations to the several Services. If in such a state of affairs the Assistants in the Central Secretariat had been permitted to compete for examinations to be held for recruitment to the Central Secretariat Service Class II, the objection of the type now formulated could never have been put forward. The mere fact therefore that the examination is a combined one ought not obscure the fact that it is in reality several examination which is combined and is being so held merely for the sake of convenience and not because of any legal necessity. In these circumstances we consider there is no merit in this objection which we unhesitatingly reject.

It was next urged that under Rule 6(c) there was a discrimination between employees of the Union Government in the several Departments and that while in the case of employees in certain of the Departments there was no ban against their competing for a Class I post, Assistants in the Central Secretariat Service were discriminated against by their being confined to compete Class II post. This submission again is, in our opinion, without any force. The question whether it is convenient for a Department to retain its officers within its own ranks or whether it can afford to part with them for being employed in other Services is a matter eminently of the necessities and convenience of the Department. If, as must be, it is conceded that the exigencies, convenience, or necessity of a particular department might justify the imposition of a total ban on the employees in that department from seeking employment in other departments, a partial ban which permits them to seek only certain posts in the same department cannot be characterised as illegal as being discriminatory. The mere fact therefore that under the rules officers in certain other departments are permitted to compete for a Class I post is no ground by itself for considering such a variation as an unreasonable

discrimination, violative of Arts.14 and 16 (1) of the Constitution as not based on a classification having a rational and reasonable relation to the object to be attained. Of course, no rule imposes a ban on these employees resigning their posts and competing for posts in the open competition along with 'open market' candidates.

This completes the submission made to us on behalf of the petitioner in Writ Petition no.221 of 1963. As stated earlier, except in the matter of details the averments and points arising for decision in the other two Petitions nos.220 and 222 of 1963 are exactly similar.

For the reasons stated these petitions fail and are dismissed. There will be no order as to costs."

(19) The correct name of the petitioner is Hirender Kumar Nigam and not Birender Kumar Nigam as noticed by the Delhi High Court. Still further, this aspect has been examined with reference to the employees of Naval Services in ***Union of India*** versus ***R.P.Yadav***[2]. The Hon'ble Supreme Court in para 24 and 25 summed up as under:-

"**24.** An incidental question that arises is whether the claim made by the respondents to be released from the force as of right is in keeping with the requirements of strict discipline of the naval service. In our considered view the answer to the question has to be in the negative. To vest a right in a member of the Naval Force to walk out from the service at any point of time according to his sweet will is a concept abhorrent to the high standard of discipline expected of members of defence services. The consequence in accepting such contention raised on behalf of the respondents will lead to disastrous results touching upon the security of the nation. It has to be borne in mind that members of the defence services including the Navy have the proud privilege of being entrusted with the task of security of the nation. It is a privilege which comes the way of only selected persons who have succeeded in entering the service and have maintained high standards of efficiency. It is also clear from the provisions in the Regulations like Regulations 217 and 218 that persons who in the opinion of the prescribed authority, are not found permanently fit for

[2] (2000)5 SCC 325

any form of naval service may be terminated and discharged from the service. The position is clear that a sailor is entitled to seek discharge from service at the end of the period for which he has been engaged and even this right is subject to the exceptions provided in the Regulations. Such provisions, in our considered view, rule out the concept of any right in a sailor to claim as of right release during subsistence of period of engagement or re-engagement as the case may be. Such a measure is required in the larger interest of the country. A sailor during the 15 or 20 years of initial engagement which includes the period of training attains a high-degree expertise and skill for which substantial amounts are spent from the exchequer.

25. Therefore, it is in the fitness of things that the strength of the Naval Force to be maintained is to be determined after careful planning and study. In a situation of emergency the country may ill-afford losing trained sailors from the force. In such a situation if the sailors who have completed the period of initial engagement and have been granted re- engagement demand release from the force and the authorities have no discretion in the matter, then the efficiency and combat preparedness of the Naval Force may be adversely affected. Such a situation has to be avoided. The approach of the High Court that a sailor who has completed 15 years of service and thereby earned the right of pension can claim release as a matter of right and the authority concerned is bound to accept his request, does not commend itself to us. In our considered view, the High Court has erred in its approach to the case and the error has vitiated the judgment."

(20) Similarly, the Division Bench judgment of the Delhi High Court in Sarjant Parveen Kumar (supra) is also on the same lines.

(21) Learned senior counsel has further submitted that the petitioner could have resigned and thereafter applied for the post. He, hence, submitted that the petitioner cannot be forced to stay.

(22) This Court has considered the submission, however, finds no merit therein. If the petitioner wants to resign, he has to comply with the rules and terms of the appointment letter. In any case, on careful reading of clause 10 of the appointment letter, it is apparent that an employer has a right to not accept the resignation till an alternative

arrangement for a suitable substitute is made so that the studies of the students and health of the patients do not suffer.

(23) Keeping in view the aforesaid fact, no ground to issue the writ as prayed for is made out.

(24) Hence, dismissed.

Payel Mehta