



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 8831 of 2023

Reserved on: 22.11.2023

Decided on: 23<sup>rd</sup> November, 2023

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Dr. Anupam Sharma

....Petitioner

Versus

State of H.P. and another

....Respondents

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**Coram**

**Hon'ble Mr. Justice Ranjan Sharma, Judge**

<sup>1</sup> *Whether approved for reporting? Yes.*

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For the petitioner

: Mr.Dilip Sharma, Sr. Advocate  
with Mr. Kul Bhushan Khajuria,  
Advocate.

For the respondent(s)

: Mr. Anup Rattan, Advocate  
General with Mr. Vishal Panwar,  
Additional Advocate General.

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**Ranjan Sharma, Judge** (Oral)

The petitioner, being a General Duty Officer hereinafter referred to as GDO after passing Post Graduation, was appointed and is working as Senior Resident has come up before this Court, against the denial of "No Objection Certificate" (NOC) for enabling him to participate in the NEET Super Specialty Course (M.CH & DNB), Counseling {First

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<sup>1</sup> *Whether reporters of Local Papers may be allowed to see the judgment? Yes*

Round w.e.f. 18<sup>th</sup> November, 2023 to 24<sup>th</sup> November, 2023} and thereafter for resultant admission to Super Specialty Course (MCH/DNB) and in this background, has filed the instant writ petition with the following reliefs:-

- i) That the respondents may also kindly be directed to issue NOC to the petitioner to enable him to get admission Super Specialty Course (MCH/DNB).
- ii) That the respondents may kindly be directed to relieve the petitioner to enable him to get admission in Super Specialty Course (MCH/DNB).”

**2. FACTUAL MATRIX:**

2(i). Case of the petitioner, as set up by Mr. Dilip Sharma, learned Senior Counsel assisted by Mr. Kulbhushan Khajuria, Advocate, is that the petitioner completed his MBBS from Indira Gandhi Medical College, Shimla, Himachal Pradesh during the period 2010-2015. Thereafter, the petitioner was appointed as a Medical Officer - General Duty (hereinafter referred to as GDO) under the Director Health Services of the State Government and he has joined as such in Primary Health Centre, Banikhet, Block Samote, District Chamba on 10.02.2016 and served there till 04.05.2018. The

petitioner was then selected for the Post Graduation Course of M.S(General Surgery) against the sponsored seat in Indira Gandhi Medical College, Shimla and he underwent the Post Graduation Course from 7.5.2018 to 8.9.2021. After passing post graduation, the petitioner was posted as General Duty Officer-Medical Officer (Specialist) General Surgery) in Zonal Hospital, Dharamshala and he served as such from 09.09.2021 to 19.03.2022. Thereafter, the petitioner in terms of the "Resident Doctors Policy" notified on 24.12.2021 {taken on record} was appointed as Senior Resident in Department of General Surgery in Dr. Y.S.Parmar Government College, Nahan on 14.03.2022 {taken on record} and he joined as Senior Resident on 22.03.2022 and he is serving as a Senior Resident (General Surgery) in the nearby opened Medical College at Nahan till day.

2(ii). In the background of the facts referred to above, the case of the petitioner is that once the petitioner was on General Duty Officer-Medical Officer and after passing post graduation was appointed/working as a Senior Resident, then also, he continues to remain in the cadre of General Duty Officer -Medical Officer for all intents and purposes under the

Director of Health Services. It is submitted that while working as Senior Resident the petitioner appeared for the NEET Super Specialty Examination (M.CH & DNB SS)-2023 conducted by the National Medical Commission and the petitioner qualified the aforesaid examination on 29.09.2023. After qualifying the NEET Super Specialty Examination (M.CH & DNB SS) the petitioner applied to the Respondent No.2 Director of Health Services through the Principal of Dr. Y.S. Parmar Government Medical College, Nahan, for "Issuance of NOC" and "Grant of Extra Ordinary Leave" so as to enable him to pursue higher studies of NEET Super Specialty Course (M.CH & DNB) for which first round of counseling was scheduled to be held w.e.f. 18.11.2023 till 24.11.2023 *Annexure P-2*. The case of the petitioner is that though he had applied for the "NOC" and had requested for grant of "Extra Ordinary Leave", so as to enable him to pursue the higher studies but the respondents did turned a deaf ear on the request/ recommendation so made in case of the petitioner, as is borne out from the communication dated 21.10.2023 *Annexure P-3*. However, on making inquiries about the outcome of the request /recommendation

as in Annexure P-3 referred to above, the petitioner was verbally informed, on 6.11.2023 that NOC cannot be issued in favour of the petitioner for enabling him to participate in counseling and to pursue Super Specialty Course (M.CH & DNB) Course, for which, the first round of counseling started w.e.f. 18.11.2023 and to continue till 24.11.2023 Annexure P-2. In view of this inaction of the respondents the petitioner had filed the present writ petition i.e. CWP No.8831 of 2023 before this Court on 08.11.2023.

2(iii). This writ petition came up for admission before this Court on 09.11.2023, when this Court, passed the following order:-

“CWP No.8831/2023 & CMP No.16497/2023

Notice. Mr. Vishal Panwar, learned Additional Advocate General, appears and waives service of notice on behalf of the respondents /State.

At this stage, learned counsel appearing on behalf of the petitioner has submitted that as the counselling process has commenced, therefore, it would be in the interest of justice in case the respondents are directed to issue at least Provisional No Objection Certificate in favour of the petitioner to enable them to participate in the counselling.

As prayed for, list for consideration on

20.11.2023. *Pleadings be completed.*

In the *interregnum*, as prayed for, as an interim measure, respondent-State is directed to issue Provisional No Objection Certificates to the petitioners to participate in the counselling process for NEET-SS-2023. It is made clear that the grant of this Provisional No Objection Certificate will be subject to the outcome of the Writ Petition and no equity will be claimed by the petitioner on the basis of the interim order that is being passed by this Court today.

*Respondents are directed to issue the Provisional No Objection Certificate to the petitioner latest by 10.11.2023.”*

2(iv). Though this Court had passed the interim order on 09.11.2023 directing the respondents to issue the “Provisional NOC” to the petitioner latest by 10.11.2023, with directions to the respondents to complete pleadings i.e. to file reply and to list the case for consideration on 20.11.2023. This case was listed again on 20.11.2023, when, the matter was adjourned for 21.11.2023. On 21.11.2023, the matter was again listed, when, the learned State Counsel requested for adjournment for one day and the matter was again listed on 22.11.2023. Today (22.11.2023), the matter was again listed. On listing of the matter today, Mr. Anup Rattan

learned Advocate General, assisted by Mr. Vishal Panwar, learned Additional Advocate General at the very outset stated that State authorities do not intend to file a reply and the matter can be adjudicated on the basis of the material on record.

**3. CONTENTIONS OF PETITIONER:**

3(i). In the background of the reliefs prayed for and the factual matrix, as discussed hereinabove, Mr. Dilip Sharma, learned Senior Counsel has raised *three fold submissions:-*

3(ii). The *first submission* of Mr. Dilip Sharma, learned Sr. Advocate is that after qualifying NEET Super Specialty (M.CH & DNB) Examination on 22.09.2023, the petitioner had requested for grant of "NOC" and for grant of "Extra Ordinary Leave" for enabling him to appear in Counseling (First Round commencing w.e.f. 18.11.2023 till 24.11.2023 and the Second Round held thereafter) so as to enable him to seek admission and then to undergo the said course but the action of the respondents in neither considering nor conveying a decision on the request/recommendation dated 21.10.2023 (Annexure P-3) is arbitrary, unjust and not in spirit of law.

3(iii). The *second contention* of Mr. Dilip Sharma, learned Sr. Advocate is that State Government had issued two policies i.e. “PG/Super Specialty Policy” for regulating admission to Super Specialty Courses on 27.02.2019 (Annexure P-1) and the *Resident Doctor Policy* regulating the appointment for Senior Resident on 22.06.2019, which stood superseded by Notification dated 24.12.2021 {taken on record}. In background of these policies, he submits that though as per P.G/Super Specialty Policy dated 27.02.2019 it has been mandated in Clause 6.1 that every GDO (regular/contract), who has been sponsored to pursue Post Graduation within the State in Government Medical/Dental Colleges shall have to furnish “*a bond to serve the State for at least four years including mandatory first year of field posting after completion of their respective courses*” and even as per Clause 6.5 of the policy dated 27.2.2019 Annexure P-1, amended on 14.10.2022 (Annexure P-4); no NOC was to be granted for pursuing Second Post Graduation Course during the mandatory period of service in the State, after first Post Graduation, which clause was not applicable, in the case of petitioner who was not seeking admission to second post



graduation course. He further submits that as per amended Clause 6.5 of the 2019 policy on 14.10.2022 (Annexure P-4), once the policy permitted the candidates (GDO/direct candidates) who have passed Post Graduation to join/undergo Super Speciality Courses subject to furnishing bond and rendering one year mandatory field posting in Clause 6.1, then these clauses in 2019 policy have to be read harmoniously in the context of Resident Doctor Policy dated 22.06.2019, which stood superseded by the New Resident Doctor Policy dated 24.12.2021 whereby, the candidates GDO's {after post graduation} who working in Newly opened Medical Colleges/Institutions were not required to undergo one year's mandatory field posting in view of Clause 7.1 read with Clause 7.3.5 of the policy dated 24.12.2021. Meaning thereby, that the "requirement/conditions of one year's mandatory field posting was neither applicable/nor could this condition be insisted upon for those candidates, who are working in New Government Medical Colleges/Institutions of the State. In the background of the above two policies i.e. Policy of 27.02.2019 and 24.12.2021 Mr. Dilip Sharma, learned Senior Advocate contends that the provision of Clause

6.1 and Clause 6.5 which mandates the requirement of mandatory one years of field posting after completion of respective course can neither be applied nor made applicable for candidates appointed/joining in New Government Medical Colleges/Institutions of the State including Dr. Y.S. Parmar Government Medical College, Nahan, i.e. the college where the petitioner is working and therefore, the denial of NOC is illegal and contrary to their own policy.

3(iv). The *third contention* of learned Senior Advocate is based on the averments in Paras 10(i) and (v) of the instant writ petition, once the State authorities has granted the “NOC” to many GDOs, Medical Officers who were Post Graduate, and were working in Medical College without insisting upon the requirement of one year’s field posting to Dr. Manoj Sharma, Dr. Sohil Chauhan, Dr. Jitender Thakur, Dr. Nishant Nadda, Dr. Mahender Ranna, Dr. Ayush Sharma, Dr. Arunima Bhardwaj, Dr. Vinay Bhardwaj, Dr. Prittam then the action of the respondents, in not issuing the “NOC” to the petitioner, by ignoring the mandate of the Twin Policies dated 27.02.2019 and 24.12.2021 when, the requirement of one year’s field posting of one year was not required/not

applicable/not insisted upon for petitioner, who was posted in Dr. Y.S. Parmar Government Medical College, Nahan, i.e. a newly opened college as in Clause 3.4 read with Clause 7.3.5 and Clause 7.3.3 of the policy dated 24.12.2021 and therefore, it was alleged that the action of the respondents in adopting a pick and choose criteria while issuing NOCs was arbitrary and inoperative of Article 14 and 16 of the Constitution of India.

**4. ANALYSIS ON THE CONTENTION RAISED BY THE PETITIONER.**

4(i). So far as the *first contention* raised by learned Senior Advocate is concerned that once after declaration of NEET Super Specialty Course (M.CH & DNB SS)-2023 examination on 29.09.2023 declaring the petitioner as qualified, the petitioner had applied for NOC and for grant of Extra Ordinary Leave for enabling him to participate in the Super Specialty Course (MCH & DNB-SS) counseling w.e.f 18.11.2023 to 24.11.2023 and his application for issuing NOC and Extra Ordinary Leave was recommended to the Director Health Services on 21.10.2023 Annexure P-3, then the action of the respondent in sleeping over the matter and

in neither considering nor conveying any decision thereon resulting in prejudicing the petitioner by depriving of his rights to be considered in the first round of Counseling w.e.f. 18.11.2023 to 24.11.2023 is not in spirit of law. The respondent-State was bound to act in a fair, proper just and non-arbitrary manner. Once the case was recommended for grant of NOC and Extra Ordinary Leave on 21.10.2023, then, fairness demanded that the respondents should have considered the case and pass an appropriate order, in the spirit of the "Twin Policy" but the action of the respondent has definitely in the considered opinion of this Court, has prejudiced the petitioner, by depriving him of his right of consideration to participate in the counseling and resultant admission and the right to undergo the course. This action of the State authorities is not only deplorable but at the same time it had lead to arbitrariness and perversity and on this ground the denial of NOC to the petitioner has not only prejudiced him but has resulted in depriving of his right to be considered in counseling and to seek resultant admission and to pursue Super Specialty (MCH & DNB) course and therefore, the act of the respondent is violative of Article 14 of

the Constitution of India.

4(ii). The *second contention* of Shri Dilip Sharma, learned Senior Advocate that Post Graduation and Super Specialty Course policy dated 27.02.2019 and the Resident Doctor policy dated 22.6.2019 which was superseded by a new policy on 24.12.2021 have to be read harmoniously as of both these policies which are undoubtedly supplemental to each other. Mr. Dilip Sharma, learned Sr. Advocate submits that though in the "PG/Super specialty Policy" dated 27.02.2019 and Clause 6.1 thereof, it was mandatory for a GDO to furnish a bond to serve the State for at least four years, including mandatory first year of field posting after completion of their respective courses and Clause 6.5 of this Policy debarred the grant of NOC for Super Specialty Course to any candidate during the mandatory period of service, then this policy has to be read in conformity/ in conjunction/ and harmoniously with the Policy dated 24.12.2021 whereby, the requirement of one year's of mandatory field posting is not to be insisted upon for those GDO, who after passing Post Graduation were appointed working as Senior. Residents

in New Government Medical Colleges/Institutions of the State, in view of Clause 3.4 of the notification dated 24.12.2021, which included the petitioner's college i.e. Dr. Y.S. Parmar Government Medical College, Nahan, therefore, the requirement of one year's field posting is not applicable and cannot be insisted upon in case of the present petitioner. In order to appreciate the contention Mr. Dilip Sharma, learned Senior Advocate refers to the notification dated 27.02.2019 (Annexure P-1) needs to be taken note of.

4(iii). Clause 3.1.6 of the PG/Super specialty Policy dated 27.02.2019 Annexure P-1 defines the term field posting, reads as under:

*"3.1.6 Field posting shall mean the posting in various peripheral Health Institutions of the State including Primary Health Centre, Community Health Centre, Civil Hospitals, District Hospitals, Zonal Hospitals and Regional Hospitals, Teaching posts in Government Medical/ Dental Colleges of the State shall be excluded from the definition of field posting but shall include the posts of Casualty Medical Officers and Medical Superintendents."*

In addition to this, the other provisions of the aforesaid policy are extracted below:

3.1.7 'General Duty Officer', in short GDO shall mean

the doctors under the establishment of the Director, Health Services, Himachal Pradesh and shall include the doctor appointed on regular/ contract basis.

Clause 3.1.11 defines the term *No objection Certificate*, which reads as under:-

3.1.11 '*No Objection Certificate*' in short *NOC* shall mean the No Objection Certificate issued by the Director, Health Services, Himachal Pradesh to pursue Post Graduation and Super Specialty course as may be applicable.

Clause 3.1.12 defines the term Post Graduation Course, which reads as under:-

3.1.12 '*Post Graduation*' shall mean the Post Graduate MD/MS/MDS/MHA/MPH/ DNB/ Diploma courses or any such equivalent courses.

Clause 3.1.17 defines the term "Super Speciality Courses", which reads as under:

3.1.17 '*Super specialty courses*' shall mean the courses pursued after Post Graduation and shall include DM/MCh/DNB (Super Specialty) or any such equivalent courses.

Clause 4 of the Policy provides two methods for encadrement of GDO i.e. on contract basis and regular basis, which read as under:

#### 4. GDO Encadrement

The *cadre of GDOs shall be built up* by the following two methods:-

##### 4.1 Contractual basis

4.1.1 Campus Interviews shall be conducted in all the Medical Colleges by the DHS for field postings at least 3 months prior to the completion of internship and posting orders shall be issued to willing candidates before the completion of internship.

4.1.2 Walk-in-interviews shall be held in the office of the DHS as may be decided by the Government from time to time for various field postings.

4.1.3 Those Direct Candidates who serve the state beyond the mandatory period of peripheral service shall continue as GDOS (if willing) and shall be treated as contractual candidates for all practical purposes.

##### 4.2 Regular basis

4.2.1 The contractual GDOs may be regularized in accordance with the policy notified by the Government from time to time.

4.2.2 Recruitment may also be conducted through Himachal Pradesh Public Service Commission, Shimla on regular basis as may be decided by the Government from time to time.



4(iv). In order to appreciate the submission of Mr. Dilip Sharma, learned Senior Advocate, it is relevant to have a look at the provisions of Clause 6, which prescribes the “terms and conditions of Bond” including clause 6.1, 6.2 and 6.5, reads as under:

6. *Terms and conditions of Bond for Post Graduation :*

6.1 As the Government incurs substantive expenditure on each candidate for doing Post Graduation and also pays them full pay along with all allowances and seniority during the course, *every GDO (regular/contract) who have been sponsored to pursue Post Graduation within the State in Government Medical/Dental Colleges shall have to furnish a bond to serve the State for at least four years including mandatory first year of field posting after completion of their respective courses.* Similarly, in case of GDOs sponsored for Post Graduation outside the State on sponsored quota seats of Autonomous Institutions, as the Government pays them full pay alongwith increments during the course and they are not even serving the state during the course, every such GDO (regular) shall have to furnish a bond to serve the State for at least five years including mandatory first year of field posting after completion of their respective courses. Since the direct candidate who pursues Post Graduation within the State in Government

Medical/Dental Colleges on State/All India Quota stand on a different footing as they are not entitled to service benefits including full pay (with allowances and increments) and chances of regularisation to which their GDO counterparts are entitled; however, keeping in view the resources expended in their education by the government including payment of stipend, every such direct candidate shall have to furnish a bond to serve the State for at least two years including mandatory first year of field posting after completion of their respective courses.

6.2 The bond as per clause 6.1 shall be in the following form:

6.2.1 All the candidates as per clause 6.1 shall furnish a bond in the form of a legal undertaking to serve the State for prescribed period failing which the candidate shall have to pay the Rs. 40 Lacs to the State Government. The candidate shall also furnish an undated cheque from a scheduled bank amounting to Rs. 40 Lacs in the name of DHS. The DHS shall be at liberty to get the cheque encashed in event of violation of the bond conditions.

6.2.2 The candidates as per clause 6.1 shall also deposit their original bachelor degree with the DHS/DDHS (in case of GDOs) and DME (in case of direct candidates). The concerned issuing University/Institution shall be informed about such retention and the candidate shall be debarred from obtaining any duplicate degree. The original bachelor degree shall be released only after completion of the Bond Period or after deposition of

the requisite amount and this shall be a part of the bond agreement.

6.2.3 The candidates shall also furnish undertaking as a part of bond that they shall complete the course prescribed failing which they shall be liable to pay Rs. 10 lakhs to the State government for wastage of seat.

6.2.4 The prescribed format of the bond shall be as per Annexure B.

6.3 It shall be the sole responsibility of DHS/DDHS to ensure the furnishing of such documents from each GDO candidate who is being sponsored and the sole responsibility of the Principal of concerned Medical College to ensure collection of these documents at the time of admission of a direct candidate to the course. Any dereliction of duty in this end shall make the concerned liable for action.

6.4 The custodian of these three documents—Bond as legal undertaking, undated cheque and the original Bachelor's Degree shall be DHS/DDHS (in case of GDOs) and DME (in case of direct candidates through Principals of respective colleges). Two months before the tentative completion of the Post Graduation in every Medical/Dental College, the DHS/DDHS shall conduct walk in interview in the concerned college and shall take options from all those candidates who are bonded to serve the State. Simultaneously, the DHS shall take over the custody of the documents including

the Bond agreement, undated cheque and Original Bachelor degree in respect of direct candidates. The field posting orders of such candidates shall be issued by the DHS/DDHS within a month of declaration of PG results and successful clearing of the PG Exams subject to vacancy. The concerned Principals shall relieve the candidates (including GDOs and direct candidate) only after successful completion of the course with the direction to report to the DHS.

6.5 *In no case, NOC will be granted* for second Post Graduation Course/Super Specialty Course/Senior Residency to any candidate during the mandatory period of service of the State after first Post Graduation.

4(v). Clause 8 of the Policy dated 27.02.2019 prescribes the remuneration during the mandatory field posting, which is admissible to GDO, reads as under:

8. Remuneration during the mandatory field posting

8.1 The regular GDO shall continue to draw the emoluments and pay admissible to him/her with due allowances and increments during the period of mandatory field posting.

8.2 The contractual GDO shall continue to draw the salary as admissible to him as per terms of the contract.

8.3 The Direct candidates shall draw salary at the rate as admissible for contract and shall be treated as contractual GDOs for all practical purposes during the period of mandatory field posting. However, if the direct candidate subsequently joins as Senior Resident in any of the Medical Colleges after completion of mandatory first year of field posting, he shall draw the pay as prescribed for a Senior Resident.

A reference to Para 11 of the Policy dated 27.02.2019, deals with the “Issuance of NOC and sponsorship for perusing the Super Specialty Courses” and the relevant extract thereof reads as under:

11. NOC and Sponsorship for pursuing Super Specialty courses:

11.1 NOC/Sponsorship for GDOs :

11.1.1 There shall be no requirement of NOC for appearing in the All India NEET Super Specialty or any other Entrance Examination to the Super Specialty Courses prescribed except for appearing against the Sponsored quota seats of the Autonomous Institutions.

11.1.2 *Since the state needs the services of super specialists to improve the health care facilities within the state, the state would offer sponsorship to candidates who wish to pursue super-specialty courses, subject to following conditions:—*

(a) *GDO seeking sponsorship should be regular and should have completed the mandatory service of the State after Post Graduation as per clause 6.1 if the candidate had pursued post graduation earlier as a sponsored candidate.*

(b) Those candidates who had initially joined as Direct Candidates but subsequently turned GDO or those who have joined GDO ship after doing Post Graduation from elsewhere shall be considered for sponsorship to Super specialty Courses subject to the condition that the GDO should be regular and should have served the State for at least three years including one year of mandatory field posting.

(c) *In case of GDOs, who fulfil the conditions as laid down at clause (a) and (b) above, and have cleared NEET-SS or any such prescribed examination including un-sponsored seats of Autonomous Institutions shall apply to the DHS for Sponsorship and shall be relieved after fulfilment of formalities as prescribed at Clause 11.3.*

(d) In case of GDOs, who wish to pursue the Super Specialty Courses on sponsored seats of Autonomous institutions, NOC shall be granted only subject to fulfilment of clause 11.1.2 (a) and (b), notwithstanding the requirement of lesser/greater service in the prospectus of any particular Autonomous Institution.

(e) Such candidates who have been granted NOC as

prescribed at Clause (d) above and have been subsequently selected to pursue the Super Specialty Course against sponsored quota of Autonomous Institutions shall apply to the DHS for relieving and shall be relieved after fulfilment of formalities as prescribed at Clause 11.3.

### 11.3 Terms and Conditions of Sponsorship for Super Specialty Courses :

11.3.1 As the Government incurs substantive expenditure on each candidate for doing Super Specialty and also pays them full pay during the course, every GDO (regular) who have been sponsored to pursue Post Super Specialty within the State in Government Medical/Dental colleges shall have to furnish a bond to serve the State for at least five years after completion of their respective courses. Similarly, in case of GDOs/medical faculty sponsored for Super Specialty outside the State (including sponsored quota seats of Autonomous Institutions), as the Government pays them full pay alongwith increments during the course, every GDO (regular)/medical faculty who has been sponsored to pursue Super Specialty outside the State shall have to furnish a bond to serve the State for at least seven years after completion of their respective courses. Similarly, as the Government expends huge resources in the education of Direct Candidates including payment of stipend, every direct candidate who pursues Super Specialty within the State in Government Medical/Dental Colleges shall

have to furnish a bond to serve the State for at least three years after completion of their respective courses.

11.3.2 The categories of Super specialty Students (GDO/Direct) shall furnish bond as per detail below:

(a) The candidates shall furnish a bond in the form of a legal undertaking to serve the State for prescribed period failing which the candidate shall have to pay the Rs. 60 Lakhs to the State Government. The candidate shall also furnish an undated cheque from a scheduled bank amounting to Rs. 60 Lacs (Sixty lacs) in the name of DHS (in case of GDOs) and or DME (in case of medical faculty/direct candidates). The DHS/DME shall be at liberty to get the cheque encashed in event of violation of the bond conditions.

(b) The candidates shall also furnish undertaking as a part of bond that they shall complete the course prescribed failing which they shall be liable to pay Rs. 15 lakhs to the State government for wastage of seat.

(c) The prescribed format of the bond shall be as per Annexure-B.

11.3.3 The general conditions including violation and procedure to be adopted shall be same as outlined in Clause 6, unless otherwise prescribed in this clause.

4(vi) A perusal of Clause 12.3 of the Policy empowers the State Government to alter/amend the PG/Super Specialty



Policy at any time/from time to time. Drawing force from Clause 12.3 of the Policy dated 27.02.2019, Mr. Dilip Sharma, learned Sr. Advocate, submits that once the State Government had issued an Office Order on 21.08.2019 making the requirement of field posting of one year mandatory but with the rider that the period of service rendered by a GDO after post graduation in the Medical College of the State, shall not be counted as mandatory field posting with immediate effect but once this policy was diluted on 24.12.2021 providing that the requirement of one years field posting was not required for GDOs {who had first post graduation and were working/appointed as Senior Resident in any of the five newly opened Medical Colleges} which includes the college of the petitioner as per Clause 3.4 read with Clause 7.3.5 and Clause 7.3.7, the same was not required/insisted upon from the petitioner and therefore, the denial of NOC is illegal. However, the office order dated 21.08.2019 reads as under:-

“Government of Himachal Pradesh  
Department of Health and Family Welfare

File No. HFW-B(B)1-10/2018-VOL-1  
Dated Shimla 21.08.2019.

Office order.

WHEREAS, several references are being received by the Government seeking clarification on the definition of field posting in context of PG/Super Specialty Policy and Resident Doctor Policy notified vide this Department notifications No.: HFW- B(F)4-9/2017-II dated 27-02-2019 and HFW-B(B)1-10/2018 dated 22-06-2019. It is clarified that except for the specialties like Anatomy, Physiology, Nuclear Medicine etc. in respect of which there is no sufficient work in field institutions, the period served by the candidates (GDO/direct candidates) in the Government Medical Colleges of the State shall not be counted as mandatory field posting, with immediate effect, in public interest

By Order.

Sd/-

Addl. Chief Secretary (Health) to the Government of Himachal Pradesh”

4(vii). A perusal of the PG/Super Specialty Policy dated 27.02.2019 Annexure P-1 as amended on 14.10.2022 reveals that once the State Government had notified Two Policies for regulating the field posting of GDOs who were Post Graduate and these appointed were working as Senior Resident in the State. These two policies were notified “First Policy” i.e. PG-SS Policy dated 27.02.2019 Annexure P-1 and on 22.06.2019

by the State Government but once the policy dated 22.06.2019 stood superseded by way of “New Resident Doctors Policy” on 24.12.2021, whereby, as per Clause 3.4 read with 7.3.5 and 7.3.7 the requirement of one year’s field posting was not required/or was not to be insisted upon for those incumbents who are/have served in New Government Medical College/Institution, which includes, the institution of the petitioner i.e. Dr. Y.S. Parmar Government Medical College, Nahan, therefore, it is necessary to have a recap of the policy dated 22.06.2019, which stood superseded by the new Policy on 24.12.2021, the relevant portion of the existing policy, reads as under:

“3.1. Senior Resident’ or ‘Tutor Specialist’ shall mean the doctors who have completed their Post Graduation in any clinical and non-clinical specialty as recognized by National Medical Commission (NMC).

3.2. ‘Junior Resident -Non Academic’ or ‘Tutor General’ shall mean the doctor who is a MBBS degree holder and is not pursuing a Post Graduation course.

3.3. ‘Junior Resident -Academic’ shall mean the doctor who is a MBBS degree holder and is

pursuing a Post Graduation course [PG(MD/MS/DNB) Students].

3.4 'New Government Medical Colleges/ Institution' shall mean Dr. YSPGMC Nahar, SLBSGMC Ner Chowk Mandi, Pt. JLNGMC Chamba, Dr. RKGMC Hamirpur and Atal Institute of Medical Super Specialities (AIMSS), Chamiana."

Mr. Dilip Sharma, learned Sr. Advocate, submits that it is necessary to have a look at the new Resident Doctors Policy dated 24.12.2021 and the provisions thereof. Clause 5 of this policy provides that the post of Senior Resident was a Class-1 (Gazetted) Tenure Post. Learned Sr. counsel also refers to para 7.3.5 and 7.3.7 which read as under:

7.3.5 The GDOs/ Direct Candidates who have furnished *bond to serve the State after Post Graduation in lieu of sponsorship shall be required to serve a period of minimum one year in field posting before being eligible for Senior Residency in IGMC Shimla and Dr. RPGMC Tanda* and for this purpose the last date of submission of application by the candidate shall be taken as the cut-off date. However, this condition shall not be applicable to the direct candidates who have not availed

sponsorship of the State while doing Post Graduation and who are not bound by conditions of any bond. *However, this condition shall not be applicable for new Government Medical Colleges/ Institutions of the State.*

7.3.7 Under this policy, those Medical Officers/ direct candidates after completion of their Post Graduation posted in new Government Medical Colleges/ institutions against the vacant posts of Senior Resident/ Tutor Specialist may be clubbed with Senior Resident/ Tutor Specialist; however, this period shall not be counted for “teaching experience”; but shall be counted for one year mandatory peripheral service.

4(viii) In the background of the P.G Super Specialty Policy dated 27.02.2019 and the Resident Doctor Policy dated 22.06.2019, which stood superseded by New Policy dated 24.12.2021, a combined reading of the Twin-Policies provides that the requirement of minimum one year’s field posting, as in Para 1 of the Policy dated 27.02.2019 (Annexure P-1) was not to be insisted upon/not required for those GDOs (who after doing Post Graduation were appointed/working as Senior Residents) continued to belong to the cadre of GDOs and in terms of Clause 3.4 and Clause 7.3.5 and 7.3.7 of the

Resident Doctors Policy dated 24.12.2021 as referred to above, they could not be denied NOC due to non completion of one year field posting and therefore, the denial of NOC as per verbal assertion of the State Authorities, which is sought to be argued by the learned Advocate General, is in considered view of this Court, is without any substance for the reason that once the State Government had issued Twin Policies dated 27.02.2019 and Policy dated 24.12.2021 which were supplemental to each other, qua the prescription or requirement/non requirement of one year's field posting; which is not to be insisted upon/not required in case of those GDOs who are working as Senior Resident, being encadereed as GDOs in new Government Medical Colleges/Institutions, which includes Dr. Y.S. Parmar Government Medical College, Nahan, i.e. the institution in which the petitioner was serving w.e.f. 22.03.2022 till date. The contention of Mr. Dilip Sharma, learned Sr. Advocate needs to be accepted for the reason that once the State Government issued a Twin Policies on 27.02.2019 and on 24.12.2021 regarding the requirement/non-requirement of one years field posting and when these policies read together arrive at a definite

conclusion that the requirement of one year of field posting after doing Post Graduation is not to be insisted upon/not required in case of those incumbents who have been serving or are serving in the newly opened Medical Colleges i.e. Dr. Y.S. Parmar Government Medical College, Nahan, where the petitioner is working then the respondent cannot deprive the petitioner of the NOC and/or the Extra Ordinary Leave for permitting to participate in the counseling w.e.f. 18.11.2021 to 24.11.2023 in the first round of counseling and then to get admission and to undergo the Super Specialty Course as the same shall amount to permitting the respondents to take leverage of their own policies or diluting their own policies which cannot be permitted, in any manner, leading to depriving the petitioner, of his fundamental right to be considered for counseling and if selected, then to pursue the Super-Specialty Course (MCH and DNB-SS). In this background, the action of the respondent-State authorities being de hors their own existing twin policies is untenable on facts as well as law.

4(ix). The *third contention* of Mr. Dilip Sharma, learned Sr. Advocate, is that once the State Authorities have granted

NOCs to various GDOs who had passed Post Graduation for pursuing the super specialty (MCH and DNB-SS) then as mentioned in Para 10 (v) of the writ petition and these facts had not been denied by the Respondents either by filing a reply to the averments made therein or during the course of the arguments by the learned Advocate General or the State authorities then, the above averments, in absence of denial certainly in view of this Court, confers a right on the petitioner also to avoid discrimination and prejudice to the petitioner and the denial/withholding of NOC and Extra Ordinary Leave amounts to divesting him of fundamental right to participate in Counselling and upon qualifying the counselling, to get admission and then to pursue the higher course. The charge of discrimination is writ large, in the absence of any denial thereof by the State Authorities and therefore, the action of the State Authorities is arbitrary and violative of Article 14 of the Constitution of India.

**5. CONTENTION OF LEARNED ADVOCATE GENERAL AND ANALYSIS THEREOF.**

5(i). The *first contention* of Mr. Anup Rattan, learned Advocate General is that clause 6.1 of the policy dated



27.02.2019 has to be read in consonance with clause 6.5 of the said policy, which stands amended by the notification dated 14.10.2022 Annexure P-4 whereby NOC is not to be granted. In order to appreciate the submissions of the learned Advocate General, a reference to Clause 6.1 and 6.5 of Annexure P-4, at the sake of repetition reads as under:

Clause 6.5 of PG/SS policy dated 27-02-2019 shall be replaced as under:-

6.1 As the Government incurs substantive expenditure on each candidate for doing Post Graduation and also pays them full pay along with all allowances and seniority during the course, every GDO (regular) contract) who have been sponsored to pursue Post Graduation within the State in Government Medical/ Dental colleges shall have to furnish a bond to serve the State for at least four years including mandatory first year of field posting after completion of their respective courses. Similarly, in case of GDOs sponsored for Post Graduation outside the State on sponsored quota seats of autonomous Institutions, as the Government pays them full pay along with increments during the course and they are not even serving the state during the course, every such GDO (regular) shall have to furnish a bond to serve the State for at least five years including mandatory first year of field posting after completion of their respective courses. Since the direct candidate who pursues Post

Graduation within the State in Government Medical/Dental colleges on State/ All India Quota stand on a different footing as they are not entitled to service benefits including full pay (with allowances and increments) and chances of regularisation to which their GDO counterparts are entitled, however, keeping in view the resources expended in their education by the government including payment of stipend, every such direct candidate shall have to furnish a bond to serve the State for at least two years including mandatory first year of field posting after completion of their respective courses.

Provided further that such GDOs who get selected as per Clause 6.5, for doing Super speciality before completion of the bond period of Post Graduation i.e. after mandatory completion of one year of field posting as such in that event the candidate already being bonded to serve the State as per the provisions of this policy for doing Post Graduation for 4/5 years alongwith bond amount of 40 Lakhs on such selection for the Superspecialty course will have to furnish an undertaking on judicial paper to serve the balance bond period for doing Post Graduation alongwith the bond period applicable after doing Super Speciality course for serving the State as the case may be. For this purpose both the bond periods shall be clubbed together for serving the State for a period equal to balance bond period of PG course + mandatory period of bond in respect of Superspecialty course apart from

the mandatory one year of field posting and the candidates shall furnish a fresh bond in the form of legal undertaking to serve the State for the clubbed period failing which the candidate shall have to pay Rs 90 Lakhs to the State Government. The candidate shall also furnish an undated cheque from a scheduled bank amounting to Rs. 90 Lakhs in the name of DHS/DME. The DHS/DME shall be at liberty to get the cheque encashed in event of violation of the bond conditions.

6.5. *In no case, NOC will be granted for second Post Graduation course to any candidate during the mandatory period of service of the State after first Post Graduation except for doing the super specialty course, in which case the candidate will be considered for the grant of NOC after completing one year compulsory field posting subject to 'balance' bond period as per Clause no. 6.1."*

The submission of by Mr. Anup Rattan, learned Advocate General, that the provision of Clause 6.1 and 6.5 in the Policy dated 27.02.2019 and the Amended Policy dated 14.10.2022 and Clause 6.5 thereof provides that no NOC is to be granted but a reference to the above provision reveals that the facts are otherwise. A bare reading of Clause 6.5 of the Notification dated 14.10.2022 Annexure P-4 reveals that the NOC cannot be granted for second post graduation course

which is not the claim of the petitioner, in the instant case, as aforesaid provision, only debars a candidate who has undergone first post graduation from doing second post graduation without having rendered the mandatory period of one years field posting - service in the State, and in that situation the denial of NOC is definitely justified. The second part of Clause 6.5 in the Notification dated 14.10.2022 (Annexure P-4) carves out an exception, whereby it mandates that, for doing super specialty course in which the candidate will be considered for the grant of NOC after completing one years compulsory field posting subject to compliance of the bond period as per Clause 6.1. Meaning thereby, that in case, a candidate who wants to pursue the super specialty course as in the case of the petitioner, then, for such a candidate the NOC is to be issued after completing one years compulsory field posting subject to compliance bond period as per clause 6.1. The submission of the learned Advocate General is not in spirit of law for the reason that Clause 6.1 and Clause 6.5 of the Policy dated 27.02.2019 (Annexure P-1), including Clause 6.5 of amended policy dated 14.10.2022 have to be read harmoniously and in conjunction with and in

conformity with the notification dated 24.12.2021 whereby the requirement of one years of field posting is not to be insisted upon for those incumbents GDOs, who were appointed/working as Senior Resident in any of the New Medical Colleges/Institutions including Dr. Y.S. Parmar Government Medical College, Nahan, as in the case of the petitioner, as referred to above and therefore, the submission of the learned Advocate General will lead to anomalous situation by ignoring its own policies is without merit. However, the interpretation, sought to be given, by the learned Advocate General based on amended Clause 6.5 of the notification dated 14.10.2022 can apply, in those cases requiring, one years mandatory field posting as in Clause 6.1 only in case of those incumbents-GDOs, who after passing post graduation continued to serve as GDOs-Medical Officer (Specialists) and had not opted or selected/appointed on merit in new medical college, and the condition of one years field posting was not required/insisted upon, as in the case of the petitioner.

In view of this the denial of NOC to the petitioner is highly unjust and arbitrary.

5(ii). The *second contention* of learned Advocate General is that issue with respect to the issuance of denial of NOC has been discussed in detail by the Division Bench of this Court in *LPA No. 67 of 2021* titled as *Dr. Chander Shekhar vs. State of Himahcal Pradesh and others* decided on 24.11.2021 {copy taken on record}. The submission of the learned Advocate General is without any substance for the reason that in the case of Chander Shekhar (supra) the parties therein had based their claim for issuance of NOC on the basis of the Policy dated 03.10.2017 which stood superseded by the New notification dated 27.02.2019, and the claim based on the policy dated 24.12.2021 as has been contended by the learned Senior Advocate in this case was neither issued nor was it the subject matter in the case of Chander Shekhar (supra) and therefore, the judgement is not applicable on facts, in this case.

5(iii). The *third contention* of the learned Advocate General is that in case the petitioner is permitted to go for Super Specialty Course then, the resultant post of Senior resident at Dr. Y.S. Parmar Government Medical College, Nahan, shall fall vacant. This plea is without any substance

for the reason that once the State Government had issued the twin policies, as referred to above, which permits the GDOs who have passed post graduation and were appointed/deployed as Senior Resident(s) can pursue the Super Specialty Course (MCH and DNB-SS) without insisting for one years field posting then the benefit accruing to the petitioner from these twin polices cannot be denied to the petitioner. Moreover, the accruing of resultant vacancies of Senior Resident, is an incident of service, which is the outcome of the polices issued by the State Government itself and therefore, the plea is not tenable, on facts and law.

6. Taking in account the entirety of the facts and circumstances one more issue needs to be addressed. Once this Court had passed an interim order on 9.11.2023 directing the respondent to issue a provision NOC to the petitioner latest by 10.11.2023; yet the action of the respondent in neither implementing the orders passed by this Court nor in filing the reply to the writ petition or to the application, in which interim was granted speaks about the lackcity on the part of the State Authorities, is deprecated.

Without commenting further, the action of the respondent in not issuing the NOC and also the Extra Ordinary Leave as referred to in the communication dated 21.10.2023 is in considered view of this Court is arbitrary and not in spirit of the mandate of law.

**7. CONCLUSION BASED ON ANALYSIS :-**

7(i). Taking note of the contentions raised by the learned counsel for the petitioner as well as the learned Advocate General and after analyzing their respective contentions and on perusal of the pleadings and the documents [taken on record], this Court is of the considered view that prayer of the petitioner for grant of 'No Objection Certificate' and for grant of Extra-Ordinary Leave, for enabling him to participate in NEET-Super-Specialty Course (MCH and DNB-SS) Counseling (First Round) with effect from 18.11.2023 to 24.11.2023 and thereafter to seek admission and to pursue the aforesaid course, needs to be accepted/granted as: **(i)** PG/Super-Specialty Policy dated 27.12.2019, Annexure P-1, amending vide office order dated 21/26.08.2019 vis-à-vis the Resident Doctors' Policy notified on 22.06.2019, which stood superseded, vide Notification



dated 24.12.2021 introducing a New Resident Doctors' Policy have to be read conjunctively; **(ii)**. The Twin Policies dated 27.02.2019, Annexure P-1, vis-à-vis the Policy dated 24.12.2021 [taken on record] have to be harmoniously construed; **(iii)**. The provision of Clauses 6.1, 6.2 and 6.5 of PG/Super-Specialty Policy dated 27.02.2019, Annexure P-1, requiring every GDO, who had pursued Post-Graduation and who thereafter seeks admission for Super-Specialty, is required to furnish a Bond to serve the State for at-least four years, including "mandatory first round of field posting after completion of their respective Courses" and the requirement of "field posting" has to be read harmoniously and in-conjunction with the provisions of Clause 7.3.5 and Clause 7.3.7 of the Notification dated 24.12.2021 [taken on record], referred to above; **(iv)**. The requirement of one year's field posting, as in Clause 6.1 and Clause 6.2 of 2019 Policy stands dispensed with and is neither required nor can it be insisted upon for those GDOs, who were appointed or were working as Senior Residents in New Government Medical Colleges/Institutions as per Policy dated 24.12.2021 and Clauses 3.4, 7.3.5 and 7.3.7, as referred to above. The

respondents after have issued the Policy on 27.02.2019, Annexure P-1, vis-à-vis the Policy dated 24.12.2021 [taken on record] cannot deny the benefit of 'No Objection Certificate' and the resultant participation in the counseling and admission and right to pursue the Super-Specialty Course to the petitioner by acting contrary to the object and spirit of the "Twin Policies" taken together; **(v)**. The plea of the State that the Policy dated 27.02.2019, Annexure P-1, and Clause 6.5 stood amended on 14.10.2022, Annexure P-4, cannot be any assistance to the State Authorities, when the amended Clause 6.5 governs two situations *firstly* by denying 'No Objection Certificate' to the candidate who is doing second Post-Graduation Course, which are not the facts in the present case and, *secondly*, the amended Clause 6.5 dated 14.10.2022, Annexure P-4, carves out an exception by permitting the grant of 'No Objection Certificate' to those candidates who undergo the Super-Specialty Course after completing one year's compulsory field posting, has to be read in the context of the Policy dated 24.12.2021, which dispenses with the requirement of 'No Objection Certificate' to those candidates, who are GDOs, but were

appointed/working as Senior Residents in the Newly Opened Government Medical Colleges, including the Newly Opened Dr. Y. S. Parmar Government Medical College Nahan, District Sirmaur, in case of the petitioner, as per the Notification dated 24.12.2021; (vi). In case, Clause 6.5 of the Amended Notification dated 14.10.2022, Annexure P-4, cannot be made applicable for all GDOs, irrespective of the fact as to whether a GDO after doing Post-Graduation was still working as GDO or Medical Officer (Specialist) or was appointed/working on tenure post as Senior Resident {when in both eventualities, they remain in the cadre of GDOs} then an anomalous situation arises, qua the applicability of the provision of Clause 6.5 in the Policy dated 27.02.2019, Annexure P-1, and the amended Policy dated 14.10.2022, in context of “field posting” leading to an anomaly, in eligibility amongst GDOs, who after passing Post-Graduation were appointed/working as Senior Residents were denied NOC for seeking admission to pursue NEET-Super-Specialty Course (MCH, DNB) alike the petitioner but by ignoring that such incumbent are exempted/not required to undergo one years field posting due to their service in Newly Established Medical Colleges vis-à-

vis other GDOs, who after doing Post Graduation continued as GDO-Medical Officer (Specialist) and who had served in fields postings were granted NOC's. Thus, this action amounts to carving a class within a class of GDO's Post Graduate Holders which leads to anomaly and therefore, Clause 6.1 and Clause 6.5 in the 27.02.2019 Policy and Amended Policy dated 14.10.2022, are "read down" in view of the Policy dated 24.12.2021 so as to avoid discrimination to the petitioner vis-à-vis the Class of GDO's-Post Graduate holder candidates. **(vii).** Non-issuance/denial of 'No Objection Certificate', defeats the object of twin Policies as referred to above, which is impermissible on facts as well as law; **(viii).** The State Authorities are bound to carve out a balance vis-à-vis the rights and claims of the petitioner to be considered for NEET-Super-Specialty Counseling and to get admission and to serve the State vis-à-vis the corresponding right of the State Authorities force the availability of man-power. In the instant case, once it is not the case of the State Authorities that they have negligible or deficient man-power in context of the petitioner, then, in such situation, the denial of 'No Objection Certificate' to the petitioner is unfair, arbitrary and

is accordingly set-aside and; **(ix)**. The contention of the learned Advocate General-State that in case 'No Objection Certificate' is granted then, one seat of Senior Resident in Dr. Y.S.Parmar Government Medical College, Nahan shall fall vacant cannot be a ground to deny/withhold NOC of petitioner for the reason that occurring of seat of Senior Residency is an incidence of service, flowing from or is an outcome of the implementation of the existing "Twin Government Policies" is not tenable when after admission in NEET-Super-Specialty and after acquiring the Super Specialty Course-Degree, the State shall definitely be gainer in terms of the Four Years' Bond and the acquiring of higher Degree/Qualification by the petitioner will certainly be advantageous and beneficial to the State also.

**8. DIRECTIONS:**

In view of the above discussion, the instant writ petition is allowed, with the following directions:

- (i) The action of Respondents in denying/withholding/not issuing "the Final No Objection Certificate", and in not granting "Extra-Ordinary Leave" as in communication

dated 21.10.2023, Annexure P-3, for seeking admission to Super-Specialty Course (MCH, DNB) in pursuance of the First Round of Counseling with effect from 18.11.2023 to 24.11.2023 and thereafter (if required) being arbitrary and illegal, is quashed and set aside;

(ii) The respondents are directed to issue "Final No Objection Certificate" in favour of the petitioner today itself (i.e on 23.11.2023) so as to enable him to participate in the Counseling on 24.11.2023 and thereafter (if required) as in Annexure P-2; and thereafter to undergo the Super Specialty Course (MCH & DNB) forthwith;

(iii) The Grant of 'Final No Objection Certificate' shall be subject to the petitioner furnishing a Bond in terms of Clause 6 of the Policy dated 27.02.2019, Annexure P-1;

(iv). The Requirement of one year's field posting as in Clauses 6.1 and 6.5 of the Policy dated 27.02.2019, Annexure P-1, including the amended provision, notified on 14.10.2022, Annexure P-4, is "read down" so as to avoid discrimination by carving class within one class of GDOs, Post-Graduation holders, who

are appointed/employed as Senior Residents in Newly Opened Government Medical Colleges/ Institutions, and despite exemption for one years field posting as per Clauses 3.4 and 7.3.5 of the Notification dated 24.12.2021, were denied the NOC for pursuing Super Specialty (MCH/DNB); whereas the GDOs-Post Graduates, who worked in field were made eligible for Super Specialty by issuing NOC's so as to avoid discrimination, arbitrariness and to prevent- save Clause 6.1 and 6.5 from being declared violative of Article 14 of the Constitution of India, forthwith;

(v). The Policies of 2019 and 2021, as referred to above, are to be harmoniously construed and, therefore, 'No Objection Certificate' deserves to be granted and is allowed accordingly;

(vi). The respondents are directed to hand over the original certificates of the petitioner so as to enable him to undergo the aforesaid course/or enable him to produce the same, in counseling/admission and to pursue the to the said Super Specialty Course forthwith;

(vii). In terms of the judgement passed today the Learned Advocate General/Additional Advocate General is directed to inform the Respondents by mail/whatsapp/other permissible modes about the passing of the judgement for compliance today itself (23.11.2023) forthwith;

(viii). Parties are left to bear their own costs.

List for Compliance of judgement on 28<sup>th</sup> November, 2023.

In aforesaid terms, the Writ Petition as well as the pending miscellaneous application(s), if any, also stand disposed of, accordingly.

**(Ranjan Sharma)**  
**Judge**

**November 23, 2023**  
*(tm)*