

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**

**CWP No. 2400 of 2012-J.**

**Decided on 31<sup>st</sup> December, 2012.**

---

Sh. Pawan Chandel son of Shri Durga Nand Chandel, resident of Village Pandli, Post Office & Tehsil Kotkhai, District Shimla, H.P., presently at Vijay Villa, Below M.C. Library, Sanjoli, Shimla-6, H.P.

**.....Petitioner.**

Versus

1. State of Himachal Pradesh through Principal Secretary (Health) to the Government of Himachal Pradesh, Shimla, H.P.
2. The Director of Health and family Welfare Department, Himachal Pradesh Shimla-9.
3. The Director Health Services of Himachal Pradesh, at Shimla.

**.....Respondents.**

---

*Coram*

***The Hon'ble Mr. Justice Dharam Chand Chaudhary, Judge.***

**For the Petitioner : Mr. Sanjeev Kumar Suri, Advocate.**

**For the Respondents : Mr. Rajinder Dogra, Addl. Advocate General.**

---

**Justice Dharam Chand Chaudhary, J. (oral)**

Aggrieved by the action of the respondent, more particularly attributed to the 2<sup>nd</sup> respondent, in not deploying/appointing the petitioner, pursuant to decision taken by respondent No.1 on the basis of information made available to the said respondent by respondent No.3, he has filed this writ petition for a direction to the respondent to appoint him in National Rural Health Mission against the same post on which persons similarly situated to him were

appointed in European Commission Sector Investment Programme (EC-SIP).

2. The petitioner, along with others, was appointed as short term computer expert (Software and Hardware) purely on contract basis by the 2<sup>nd</sup> respondent-cum-Nodal Officer (SIP) on 4.3.2006 vide appointment letter Annexure P-1. He continued to work as such till 31<sup>st</sup> December, 2007, as per the extension granted from time to time vide Annexure P-2 to P-12. The representation, Annexure P-13, came to be made by the petitioner and other similarly situated persons to the Health Minister, State of Himachal Pradesh with the request to absorb them against the post lying vacant in health and family welfare department. The representation was forwarded to 2<sup>nd</sup> respondent vide letter Annexure P-14. Again a representation was made to the then Health Minister and also to the Director Health Services Annexure P-15 and Annexure P-19, respectively with the request to absorb them in National Rural Health Mission. On this representation, the 1<sup>st</sup> respondent has sought the comments of 3<sup>rd</sup> respondent vide Annexure P-17, qua the utility of the services of the petitioner and other similarly situated persons, if absorbed in the mission. The respondent-State admittedly had taken a decision Annexure P-19 to deploy the staff of (EC-SIP) a closed project, in various programmes/projects being run

under National Rural Health Mission and they were deployed accordingly, however, when the petitioner heard nothing about his deployment, he obtained information under the Right to Information Act, and came to know that the persons similarly situated were already absorbed in various programmes under the National Rural Health Mission. It is in this backdrop, he had approached this Court for a direction to the respondents for making offer of appointment to him also on the same post against which the persons similarly situated to him have been appointed.

3. In reply to the writ petition, the case as set out by the petitioner stands admitted. It is submitted that the offer of appointment was also made to the petitioner on 24.11.2008, however, he did not turn up. The precise case of the respondents to this effect reads as follows:-

“9to11. .... It is added that as is also clear from the perusal of information supplied to the petitioner under RTI vide Annexure P-19 (at pages 31 and 32 to the petition), a consolidated proposal in respect of all the staff working under EC SIP including the present petitioner was submitted in an equal manner without making any discrimination to the Government by the Mission Director, under National Rural Health Mission, Himachal Pradesh wherein the services of the petitioner was proposed to be absorbed in State

Pharmacy Council, and further to assist the Drug Licencing Authority. It is further submitted that by the time when necessary approval in the matter in respect of all the staff was received back, the office of the Drug Licencing Authority in the meanwhile was shifted from Shimla to Baddi, Solan. It is added that as per the observation made on the noting portion of the office file, the petitioner was contacted on 24.11.2008 for his appointment as Data Entry operator at Baddi, but he had shown his inability to join due to his unavoidable circumstances. In view of the above factual position, it is altogether wrong as alleged that the petitioner was ever misled in any way and manner. Moreover, the averments advanced by the petitioner is again not sustainable as all the other staff working under EC SIP earlier was not permanently absorbed in the Department, but the said staff was absorbed to work under various Programmes such as NRHM Cell and RSBY Cell etc. specifically on contract basis. It is also relevant to submit here that the representation, if any filed, vide Annexure P-20, did/does not create any legally enforceable right in favour of the Petitioner, moreso when he himself had not availed the opportunity and accepted the offer granted to him for his appointment as Data Entry Operator at Baddi."

4. The petitioner, however, in rejoinder, while denying such stand of the respondent-State being wrong, has urged as follows:-

“..... It is further submitted that petitioner never denied to join in the office of Drug Licensing Authority at Badhi, Solan and question of denial never arise in view of the submission made here in above, especially when petitioner put so many efforts for the absorption in any department and even personal representation had been sent by the petitioner for the aforesaid purpose of absorption of services and particularly in the circumstances when the petitioner is in dying need of job which fact is evident from the annexures attached with the Civil Writ petition, there is no question of denying to join at Badhi, but in fact the petitioner was never informed by the respondent and never contacted for appointment in the office of Drug Licensing Authority at Baddi, District Solan, H.P. It is specifically denied that the petitioner was contacted on 24.11.2008 by the respondents for the appointment as Data Entry Operator at Badhi, any observation to this respect on the noting portion of the office file are specifically denied and further stated that the petitioner was never contacted by the respondent.....”

5. It is in backdrop the following order came to be passed on 28.9.2012:-

“Heard for some time.

The only grouse of the petitioner who was working on the post of Short Term Computer Expert (Software & Hardware) on contract basis under the European Commission Sector Investment Programme launched by the National Rural Health Mission and executed by the Department of Health and Family Welfare, Government of Himachal Pradesh is that he has not been absorbed by the respondents on closure of the programme w.e.f. 31.12.2007.

The stand of the respondents in reply to the writ petition is that the case of the petitioner and others employed under the above programme for absorption in National Health Rural Mission, Government of Himachal Pradesh was submitted to competent authority for approval. The approval was received and the petitioner was offered appointment as Data Entry Operator in the office of Drugs Licencing Authority, Baddi. He was contacted on 24.11.2008 to report for duty, however, allegedly shown his inability to do so due to unavoidable circumstances.

In the rejoinder, the petitioner has submitted that he was never informed by the respondents nor he denied to report for duty as Data Entry Operator at Baddi. Since he is in dire need of job, therefore, there is no question of denying the job.

In view of the position so emerges from the perusal of the record, it is desirable that the

respondents are directed to inform whether the vacancy of Data Entry Operator or any other post in the National Health Rural Mission, Government of Himachal Pradesh against which the petitioner can be accommodated is lying vacant or not and if there is vacant post, whether the petitioner can still be accommodated against the same and if not, why. Respondent No.2 is directed to place on record the above information by way of supplementary affidavit on or before the next date of hearing."

6. In turn the 2<sup>nd</sup> respondent has filed affidavit, which reads as follows:-

"2. That it is very humbly submitted that the requisite information has been gathered from the National Rural Health Mission and from the said information it has been found that the Government of India has approved 4 posts of Data Entry Operators for the financial year 2012-2013. At present, two Data Entry Operators are in position and two posts of Data Entry Operators are lying vacant but the State Government has not yet decided about the filling up of these two vacant posts."

7. The position as emerges from the perusal of affidavit reveals that there exists two posts of Data Entry Operator under National Health Rural Mission. The petitioner is eligible for being considered against one of such

posts because as per reply to the writ petition, offer of appointment was made to him on 24.11.2008 against same post i.e. Data Entry Operator in the office of Drugs Licencing Authority, Baddi. The respondent State may have not yet taken a decision to fill up two posts of Data Entry Operators lying vacant under National Health Rural Mission, however, this Court feels that the petitioner has a preferential right to be considered against one of such posts in view of the fact that the persons similarly situated have already been given appointment on contract basis in the year 2008. Otherwise also, these are the posts approved by the Government of India, no doubt for the financial year 2012-2013. Obviously the funds required for filling up these posts have also been sanctioned by the Government of India. There cannot be said to be any impediment in the way of respondent State to take a decision and appoint the petitioner against one of such vacant posts.

8. This Court is not satisfied that on 24.11.2008, when the post of Data Entry Operator in the office of Drugs Licencing Authority, Baddi was offered to the petitioner, he was contacted and he declined the offer. By which mode he was contacted is not clear from the record. Otherwise also, an offer to this effect should have been made in writing to the petitioner. In such a situation, no doubt he is not entitled to



any back wages from the date the persons similarly situated were adjusted in various programmes under National Rural Health Mission, however, atleast to the continuity so that in the event of the staff working under EC SIP initially, in case considered for the purpose of absorption/regularization is entitled to the benefit of the services he rendered in the project along with other similarly situated persons.

9. In view of what has been stated hereinabove, there shall be a direction to the 2<sup>nd</sup> respondent to consider the petitioner for appointment as Data Entry Operator against one of the sanctioned posts under National Rural Health Mission lying vacant, within a month from the date of production of a copy of this judgment. In the event of his appointment he shall be given the benefit of continuity from the date the persons, similarly situated in the staff of (EC SIP) project, were appointed. Against surviving grievances, if any, the petitioner, however, shall be at liberty to approach this Court again.

10. With these observations, the writ petition stands disposed of, so also the pending application(s), if any.

December 31, 2012.  
(ps)

(Justice Dharam Chand Chaudhary),  
Judge.