

(2000) 07 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 216/94

Abdul Salam Bhat

APPELLANT

Vs

State of J & K

RESPONDENT

Date of Decision : 28-07-2000

Acts Referred:

Jammu and Kashmir Leave Rules, 1979 — Rule 61(4)

Citation : (2000) KashLJ 688 : (2001) 2 SCT 517

Hon'ble Judges : Syed Bashir-Ud-Din, J

Bench : Single Bench

Advocate : M.Abdul Qayoom, J.A.Kawoosa, Advocates appearing for the Parties

Judgement

1. Petitioner, a Lecturer in General Medicine Neurology SKIMS Soura, Srinagar was deputed to undergo DM Neurology Course at Post

Graduate Institute Chandigarh. On being relieved, he joined the course at Chandigarh and completed it ending December, 93. Petitioner claimed

study leave and other benefits for the period from 3011991 to 311994, which he spent in prosecuting the MD Course at Chandigarh, same has

not been given to him as claimed. Hence the writ.

Respondents have filed reply. Their case is that, petitioner was not deputed for training by the Government and consequently study leave cannot be

granted to him since the petitioner was sent on training while on probation as Lecturer and had not completed five years the minimum service

required for study leave under rules. No right of petitioner has been violated. Petitioner's case is not covered by study leave rules. The formalities

required of him have not been completed for obtaining the study leave.

Heard.

Examination of record shows that petitioner Dr. Abdul Salam Bhat was initially appointed in 1973 as Assistant Surgeon by State Government.

However, later he was appointed as Lecturer on adhoc basis on 1986 in Medical College, Srinagar where he worked till ending June, 1989. It

was on 171989 he was appointed as Lecturer with probation period of one year by SKIMS Soura. When he applied for study leave, he was in

the employment of SKIMS, Soura. Petitioner's case for undergoing MD Course in Neurology at PostGraduate Institute Chandigarh, was taken up

by the SKIMS. A proposal for deputing him to the course was submitted to His Excellency Governor of Jammu and Kashmir in the capacity of

Ministers Incharge, for accord of sanction to study leave of two years by the then Director SKIMS (both as Director of the Institute and Exoffice

Secretary to Government. His Excellency the Governor approved the proposal conveyed under No. 272 dated 23111991 to the Director

SKIMS, Soura. It was pursuant to this approval that the petitioner was relieved on 31191 to join the DM Course in Neurology at PGI,

Chandigarh. He completed the course and reported back to the Institute on 311994 and was allowed to join and resume duties with HOD

General Medicine. It is also born on record that the petitioner was sponsored by the Institute and a sponsorship certificate was issued in his favour

in terms specifying that the payment of emoluments shall be the responsibility of the sponsoring authority i.e. State Government.

Mr. Kawoosa AAG, contents that on the day and date when petitioner was deputed and relieved to join the post he had not completed minimum

five years service therefore, there is a bar to grant him study leave, besides the petitioner could not be granted leave for the reason that necessary

formalities have not been completed for such leave. It is no where stated that the MD Course in Neurology has been of some advantage to

Government from the public, interest point of view.

Annexures P1 and P3 clearly reveal that the petitioner was deputed to do D.M. Neurology at PGI, Chandigarh after the Director of the Institute

obtained sanction to the proposal from His Excellency Governor of J and K in his capacity as Minister Incharge at the relevant period. It is also

seen that His Excellency the Governor has accorded sanction to the study leave of two years in favour of the petitioner. The proposal for deputing

said doctor to the course and two years study leave stands approved by His Excellency the Governor of J and K vide no. 272 dated 23111991.

The matter was taken up by the Director with Secretary to Government General Department Training, Jammu for grant of study leave to said

Doctor and at the same time petitioner was to do the course at Chandigarh with no financial burden cost on PGI, Chandigarh in terms of

sponsorship letter, a letter of reference to the PGI Institute at Chandigarh by the Director of SKIMS, Soura Srinagar.

7. In terms of business rules of the Jammu and Kashmir Government issued under Sections 43(2) and 45 of the Constitution of Jammu and

Kashmir, the business of the Government is to be transacted in the department specified in the 1st schedule to the Rules. In the Schedule at Item

No. 23 SKIMS Soura, falls for purpose of transacting the departmental work under Health and Medical Education Department. The business

allotted to a particular department has to be disposed of under directions (General or Special) of the concerned Minister Incharge. Each

Secretariat Department is headed by the Secretary to Government, the official Head of the Department. Inter alia all orders of the State

Government bearing signatures of Secretary shall be deemed to be properly authenticated.

(See Rules 9, 12 of the J and K Business Rules).

8. Director, SKIMS Soura is also declared as Exofficio Secretary to Government. Regarding status of the Institute, vide communication of the

General Department dated 1831986, bearing no. GD (Adm) 1D/80 Health, it is stated that for all intents and purposes SKIMS Soura is a

Government run organisation and the terms and conditions of service of the employees of the Institute are also governed by J and K CSR, besides

the rules and regulations as may be framed by the Institute. It would be seen that deputing petitioner to the course, approval of his study leave case

for two years and relieving him to join the course are all matters which have been done by the competent authority and have to be treated

authenticated. There is also presumption of correctness in favour of the official acts.

9. The contention of Mr. Kawoosa AAG. that as the petitioner was having less than 21/2 years service as Lecturer, he is not and could not be

eligible for study leave, is without basis for the reason that the Rule 61 (4) under Chapter 6 of J and K Leave Rules of 1979. provides that the

State Government shall not. ordinarily grants study leave to a Government servant who has rendered less than five years service under the

Government. The service under the Government is not classified. It can be any service. Admittedly petitioner as per respondents own case has

been appointed as Assistant Surgeon in the Health Department in 1973 and thereafter as Lecturer in Medical College. Srinagar on adhoc basis in

1986 and as Lecturer on substantive basis in SKIMS from July, 1989 in all petitioner had more than 18 years service to his credit, when he was

deputed for doing the course. Sanction of his study leave case has been approved by His Excellency Governor of the State. Besides. it is to be

seen that the rule provides that the leave may not be granted ordinarily to a. servant having less than five years service, but does not place an

absolute embargo on the powers of the Competent Authority not to grant study leave, even if the Government servant has less than five years

service. Once the proposal is approved, sanction of leave is also approved, the question of fulfilling the eligibility under the rules is an off the point

hyper technicality not, to govern the case and decisive of the issue in hand. Petitioner has successfully completed the course and joined back the

Institute in early 94. All along he is serving there. These circumstances cannot be ignored or overlooked.

In the facts and circumstances of this case, it cannot be said that the petitioner has not been given the study leave followed by other benefits in

terms of the applicable rules. The questions of exigency of public service to undergo the course of study in DM Neurology at PGI Chandigarh as a

professional course, having direct and close nexus with sphere of duty of the petitioner Doctor is a matter that is presumed to have gone into

consideration while initiating and approving the deputation of petitioner to the course at PGI and granting him study leave, as above.

The followup during or after the completion of course is a matter for the authorities to be taken care of but same cannot negate the sanction and

approval of the study leave and deputing of petitioner to the course in question.

In Dr. Harbans Lal Sharma vs. State of J and K and Others (1998 SLJ 206) where the petitioner, an Assistant Surgeon of the Health Department

was relieved to join Institute of Hygiene and Public Health Calcutta, for undergoing Diploma in Public Health, the period he spent to acquire

Diploma and thereafter again on being deputed to complete hospital exams at AIMS, New Delhi was not treated as leave by the Government, the

Court directed the Competent Authority of the Government of Health Department to treat the period of absence of petitioner consumed in doing

DPH and Postgraduation course, at par with treatment extended to named doctors sent on deputation in order to escape the charge of violation of

Article 14 of the Constitution of India.

13. In result, petition succeeds, mandamus is issued to respondents to pay salary/emoluments to petitioner for the period of his doing DMN

Course at PGI Chandigarh from 3011991 to 311994 after treating two years study leave as sanctioned and treating the remaining period in

accordance with rules on subject. The petitioner shall be entitled to all benefits to which he is legitimately eligible under the applicable rules.