

(2013) 11 RAJ CK 0182

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1886 of 2013

Chandar Prakash Gunawat

APPELLANT

Vs

State of Raj.

RESPONDENT

Date of Decision : 12-11-2013

Acts Referred:

Citation : (2014) 2 CDR 1116 : (2014) 2 RLW 1730

Hon'ble Judges : M.N. Bhandari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.N. Bhandari, J.—The writ petition is listed on the application under Order 1 Rule 10 CPC for impleadment. Learned counsel for the applicants Shri Sandeep Saxena submits that due to interim order of this Court, he applicants are not getting appointment to the post of Ayurvedic Chikitsak as otherwise they were in reserve list. The interim order is to accept the joining of the petitioner/s on the post of permit him/them to undergo the post graduation course. Petitioner/s could not join the service during the course of higher study thus, approached this Court and by virtue of interim order gave her/his/their joining while pursuing to the course. As per circular of the Government, maximum period for extension to join the service is of 6 months. The period aforesaid has also passed. Thus, by virtue of the interim order, rights of the applicants are affected. It is more so, apart from interim order pendency of three writ petitions is also affecting them. There is no stay order, yet three posts have been kept vacant and not filled by the respondents.

2. The application is seriously opposed by the learned counsel for the petitioner/s who submits that issue involved in the present matter has no lis with the applicants. The petitioner/s herein is/are one who was/were pursuing the PG Course and appeared for selection to the post of Ayurvedic Chikitsak. He/they has/have been selected and given appointment. Since petitioner/s is/are pursuing study thus, cannot effectively work with the respondents. Thus, filed

this writ petition to accept the joining and allow kind of leave or extend the joining period. The similar writ petitions have already been allowed and accordingly, interim order was passed in favour of the petitioner/s. The applicants are not in merit so as to compare their position with the petitioner/s and otherwise, the lifetime of the select list has already expired thus, claim based on it by the applicants is not tenable. It is further prayed that keeping in mind the acceptance of Similar writ petition by this Court, the matter itself may be disposed of. It is more so when few petitioners, have even completed the PG Course and joined the service and are physically working.

3. With the consent of the parties, petitions were heard finally.

4. Learned counsel for the official respondents Mr. M. Faisal Baig submits that rule does not permit joining beyond a period of 6 months. One cannot claim belated joining as a matter of right. The petitioner/s is/are not Member of service so as to get even study leave. Earlier judgment of this Court should not be applied to the present case as the arguments and issues raised herein were not argued by the respondents therein. On account of the interim order, the candidates from the reserve list could not be given appointment.

5. I have considered the rival submissions of the parties. The facts not in dispute are that all the petitioners were pursuing PG Course and applied for the post of Ayurvedic Chikitsak. They were selected and given appointment. They were unable to join service during the course of studies. They prayed to Government to extend the period of joining to complete higher studies. A writ petition was filed simultaneously to seek joining of the service and allowed to pursue the course. This court passed interim order in favour of the petitioners accordingly, many of the petitioners were allowed to join the service and even to undertake the course. Out of them, majority of the candidates have already completed their higher studies and join the service leaving few who are also on the verge of completion of higher studies.

6. The question for my consideration is as to whether a candidate pursuing PG Course can seek extension to join the service. In the alternative, if allowed to join formally, eligible or entitled to the study leave.

7. Coming to the first question, a reference of the circular issued by the Government has been given where maximum period to join the service is of 6 months subject to permission under the circular dated 19.1.1996 and 18.10.1997. It is admitted by all the counsel that there is no provision of similar nature under any of the Rules and thus, what operates is the circular. The circular no doubts directs for joining within time and under certain cases, extension can be granted to the maximum period of 6 months. The further extension can be rarest of the rare cases as specified in the circular.

8. The fact however, remains Rules 110 and 112 of RSR provides for study leave though it applies when one is in service but the purpose is to allow higher studies or of a kind of study which may be helpful to the job. If the aforesaid object is

applied then petitioners having appointed and if joined the service and thereafter selected for PG Course, would have been entitled for study leaves. In the aforesaid circumstances, if extension to join is not allowed, it would be nothing but causing discrimination. It is more so when an employee who is granted study leave is entitled to half of the salary whereas such benefits would not be available to the petitioners. It is the purpose which is required to be seen for grant of extension to join or to permit the petitioners to join or to remain on leave. The case of Dr. Sunil Kumar Mahawar vs. State of Raj. & Ors. passed in S.B. Civil Writ Petition No. 13215/2008 decided on 22.03.2012 was applied by this Court in the case of Dr. Babulal Meena vs. State of Raj. & Ors. (S.B. Civil Writ Petition No. 15955/2012) decided on 2.5.2013 and in the case of Dr. Suman vs. State of Raj. & Ors. (S.B. Civil Writ Petition No. 4889/2011) decided on 31.7.2012. Therein it was noticed that State Government did not prefer an appeal so as to challenge the judgment thus, view taken by this Court has attained finality.

9. While hearing this writ petition, learned counsel for the Official respondents made out an issue in reference to the circulars referred to above, after going through the judgment (*supra*), I find that there is no reference of the circular referred to above, thus, discussion has to be made in reference to those circular also. So far as joining of service is concerned, statutory provisions exist but it does not prescribe period of joining. Thus, circular can supplement the statutory provision but object has to be looked into which has been discussed in the earlier paras. Rule 110 and 112 of the Act of the RSR are however, quoted herein for ready reference.

110. Admissibility of study Leave.--(1) Study leave will be admissible to a permanent Government servant to pursue course of study or investigation of a scientific or technical nature which in the opinion of the sanctioning authority is considered necessary in the public interest for the working of the department in which he is employed. It will ordinarily be not granted to a Government servant who has completed 20 years of service or more.

(2) Notwithstanding the provisions contained in sub-rule (1) study leave will also be admissible to a temporary Government servant who has completed three years continuous service who has completed three years continuous service provided that the initial appointment has been made on the advice of the Rajasthan Public Service Commission in case the post falls within the purview of the Rajasthan Public Service Commission or the appointment has been made by the competent authority in accordance with the rules regulating recruitment and conditions of service framed under proviso to Article 309 of the Constitution or where such rules have not been framed the appointment has been made by the competent authority in accordance with the orders issued by the Government prescribing academic qualification, experience etc.

(3) In case of a temporary Government servant who has completed three years continuous service and is not covered by provisions of sub-rule (2) above extra

ordinary leave may be granted for a period of two years for purpose of prosecuting higher studies certified to be in the public interest in relaxation of provision contained in Rule 96(b) of Rajasthan Service Rules.

Note.--1. Diploma holders in any branch of engineering who are entitled to study leave under sub-rule (1) & (2) above may be granted study leave for a period of 24 months and in addition any kind of leave due and admissible to them upto a period of one year to enable them to obtain a degree in engineering. In case any other kind of leave is not due and admissible he may be granted extra ordinary leave not exceeding one year in addition to study leave admissible to him under this rule.

2. Temporary diploma holders in any branch of engineering who have completed continuous three years service and are not covered by the provisions contained in note 1 above maybe granted extra ordinary leave for a period not exceeding three years for the purpose of obtaining a degree in Engineering from any University in relaxation of the provisions contained in Rule 96(b) of Rajasthan Service Rules.

112. Condition for grant of Study leave.--(1) Study leave shall be granted to enable a Government servant:--

(i) to pursue a course of study or investigation of a scientific or technical nature either in India or outside India provided that it is certified by the authority competent to sanction that the grant of study leave will be in the interest of the working of the department or the service to which the Government servant belongs. The authority competent to grant study leave shall ensure that it is not granted to a Government servant with such frequency work or to cause cadre difficulties owing to his as to remove him from contact with his regular absence on leave. A period of 12 months at one time should ordinarily be regarded as a suitable maximum and should not be exceeded save for exceptional reasons.

(ii) The total period of study leave during the entire period of service of a Government servant shall not be more than 24 months. It may be taken in one spell or more than one spell. Study leave may be combined with other kinds of leave, but in no case shall the grant of this leave in combination with leave, other than extra-ordinary leave, involve a total absence of more than twenty-eight months from the regular duties of the Government servant.

Exception

Study leave to the Medical Officers shall be admissible for 36 months for acquiring degree of post graduation. Those Medical Officers who are already on Study leave shall also be entitled for enhanced period of study leave to the extent of remaining period of study leave.

(2) Study Leave is extra leave on half pay and leave salary during such leave shall be regulated in accordance with rule 97(2).

Para 121A rules is also quoted herein:

121-A. Execution of Bond to serve the State.--Those who avail of the Study Leave admissible under the R.S.R., for training should execute bond to serve the State after conclusion of the training for a period shown in the following scale--

Period of Study Leave Period for which bond is to be executed.

Three months One year.

Six months Two years.

One year Three years.

Two years Five years.

The form of the bond to be executed should be as given in the Appendix XVIII.

Government of Rajasthan's Decisions.

The question of the amount of penalty to be recovered from Government servants who are granted study leave for the purpose of study and who resign or retire from service without returning to duty after the period of study leave or at any time within the stipulated time after their return to duty has been under consideration. It has been decided that the amount of refund in such cases should be double the amount of leave salary, study allowance and the cost of fees and traveling and other expenses which will be paid to the Government servant during the period of study leave or otherwise incurred on him together with interest thereon. To achieve this purpose the form of bond prescribed in respect of study leave under Rule 121-A vide Appendix XVIII of the Rajasthan Service Rules substituted by the forms (Form A & B).

In the case of study leave granted to a temporary Government servant in relaxation of study leave rules, the amount of penalty shall also be the same as in para I above.

There may also be cases where temporary Government servants who are granted extraordinary leave as a special case in relaxation of the rules in continuation of other regular leave for study in India or abroad subject to their giving an undertaking in writing to serve the Govt. for a specified period after the expiry of their leave it has been decided that in such cases also an undertaking should be contained from the Government servant concerned in the Form C (in Appendix XVIII) before extra-ordinary leave in relaxation of the rules is granted. The amount of penalty to be filled in the form of the bond in these cases will also be worked out on the basis mentioned in para 1 above.

Clarification

A doubt has arisen as to how amount of penalty is to be calculated in respect of a Government servant who is granted extra-ordinary leave as a special case in relaxation of rules in continuation of other regular leave for study in India or

abroad and who resign or retire from service without returning to duty after the period of leave or at any time within the stipulated time after his return to duty.

It is clarified that the amount of penalty to be filled in the Bond (Form "C") for temporary Government servants granted extraordinary leave in relaxation of rule 96(b) of the Rajasthan Service Rules for study in India or abroad will be double the amount of the leave salary paid to the temporary Government servant on account of regular leave taken by him (if any) and the amount of expenditure which is likely to be incurred on the substitute appointed to perform duties in the leave vacancy of the incumbent proceeding on extraordinary leave.

2. Question has been raised whether the bond required to be executed by temporary Government servant granted extraordinary leave for prolonged periods in relaxation of Rule 96(b) of the Rajasthan Service Rules in continuation of other regular leave, if any, due and admissible for study in India or abroad in terms of Government Decision below Rule 121-A and clarification made thereunder should be supported by a contract of guarantee by a surety or more than one surety to discharge the liability of the official in the event of any default on this part.

It has been decided that to ensure the fulfillment of the obligations under the bond by the Government servant concerned, it should invariably be supported by sureties from two permanent Government servants having a status comparable to or higher than that of the Government servant who is granted extraordinary leave in relaxation of the rules. A revised form of the bond in supersession of the one prescribed vide this Department Memorandum dated 28.4.1861 referred to in para 1 above is also included in appendix XVIII.

3. In accordance with provisions of Rule 121-A of the Rajasthan Service Rules, Government servants who are granted study leave or extraordinary leave for purpose of study in India or abroad are required to execute a bond to serve the Government of Rajasthan for a specified period. Similarly those who are deputed for training abroad have to execute a bond. The form of bond are given in Appendix XVIII and XVIII-A of the Rajasthan Service Rules, Volume II.

As a result of transfer of Colleges to Universities in Rajasthan, service of teaching staff who were serving in Colleges were transferred to Universities. Some members of teaching staff were, however, under the Bond to serve the Government. The matter has been examined and it has been decided that for the purpose of Bond executed in terms of rules referred to in Paragraph 1 above the service rendered in the Universities of Rajasthan by such Government servants shall, be treated as service under Government. The decision contained in paragraph 2 above shall also apply to Government servants who on their own accord applied for direct recruitment and are appointed on teaching posts in Universities in Rajasthan or Malviya Regional Engineering College Jaipur.

10. The rules quoted above is not doubt in reference to those who are in service but then object to provide study leaves has to be looked into while deciding the

issue as to whether a person already pursuing higher studies should be debarred to join the service. It needs to be considered as to what would be the consequence if one is asked to leave the course and join the service. It would be nothing but waste of public money which is incurred to provide higher studies. It is for that reason only bond is taken by the Government while a candidate intends for higher study so that he may not leave in course between and if it is left, then liable to pay the amount. This is to ensure that nobody leave the course in between. If this is the purpose then, learned counsel for the official respondents could not clarify that what would be the purpose to press the petitions to leave the courses.

11. The argument can be that one may continue with the course and leave the job. In that eventuality also it would be nothing but sacrificing a meritorious candidate for the reason that he was pursuing a course before selection. To adjudicate the issue, reference of Rule 121A has to given. The Coordinate bench of this Court though has not referred the provisions aforesaid but a condition has been imposed to serve State Government atleast for 5 years and to submit the bond for that purposes. Keeping in mind all the aspects, I am of the view that the earlier judgment of the Coordinate bench applied is in the subsequent cases needs to be followed and otherwise the issue in reference to the circular referred to above has also been considered in the present matter.

12. The question now comes in regard to the applicant who has moved an application for impleadment. It is basically due to interim order. The perusal of the prayer does not show a relief against the applicant. However, if the petitioners are not allowed to join then applicant can have a claim being in reserve list. The question however, would be as to whether reserve list is alive so as to make a claim. The aforesaid issue has been raised by the Court but could not be clarified by giving date of select list so as to determine the life of the panel. In any case, the counsel for the applicants was heard on the merit thus, application for impleadment should be deemed to have been allowed and as legal issue is involved, petitioners were argued by the counsel finally.

13. The other aspect raised by the applicant is non-utilisation of 3 posts in view of the pendency of the present writ petitions. I find no reason for the Official respondent not to fill the post if it is permissible under the law. The pendency or interim order should have been taken limited to the petitioners and not in regard to other post and if other candidate have not join thereto. The rights of the applicants can be considered in accordance with law and it is clarified that pendency of the writ petitions has not caused any bar rather should not have been taken as obstruction for doing the needful if 3 posts are lying vacant but it should be followed strictly in accordance with the rules that is if the life of the panel is alive.

14. In view of the discussion made above, all these writ petitions are allowed. Most of the petitioners have already completed the course and have joined services thus, they may be allowed to continue in service thus, they may be

allowed to continue in service but effective date, of appointment would be the date when they joined the services after completion of course. So far as other petitioners are concerned, they should be allowed to join the service on completion of the course. However, a bond will be filled by all the petitioners to serve the State for the period of 5 years which would be as per the policy of the Government. The bond should be furnished by the petitioners if not already furnished. Application for vacation of the stay order stand disposed of in view of the final disposal of the writ petitions.