
(2006) 08 GAU CK 0093
In the Gauhati High Court

Dr. Abhijit Sarma

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 30-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 2 GLR 356 : (2006) 3 GLT 263

Hon'ble Judges : B. Sudershan Reddy, C.J.;H.N. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

H.N. Sarma, J.—The appellant by filing WP(C) No 9815/03 knocked the door of this court to invoke the jurisdiction under Article 226 of the Constitution by issuing a Writ to quash the adverse notings made against him in his personal file No. 93/2001 and to direct the Government to issue post facto notification regularizing his absence from service during training period at different places and allowing, him to join his original place of posting as Registrar of Surgery, in the Gauhati Medical College Hospital by regularizing his period of absence from 26.3.1999 till the date of filing the writ petition. In the interim the appellant has prayed for allowing him to join as Registrar of Surgery, in the Gauhati Medical College Hospital against the existing post that fell vacant due to promotion of one Dr. D.N. Choudhury.

2. To put in short the relevant facts necessary for disposal of this appeal that have emerged from the pleadings and documents are that the appellant was appointed as Registrar of Surgery, in the Assam Medical College Hospital, Dibrugarh, he was transferred to Gauhati Medical College Hospital vide notification dated 18.6.1997. The appellant was allowed to join two years fellowship and training in Surgery in Gastroenterology at Hyderabad dated 18.6.1997 with the condition that the period of absence from service would be decided later on by the Government, which would be binding on him. On completion of his training at Nizam Institute of Medical Sciences, Hyderabad, the

appellant was allowed to rejoin at Gauhati Medical College Hospital vide notification dated 31.3.2001 against a vacant post of Registrar of Surgery in the Silchar Medical College, Silchar. Immediately after joining on 2.4.2001, the appellant prayed for earned half pay/extra ordinary leave from 23.4.2001 to 23.10.2001 to undergo further course of training at Japan. Although the appellant was asked to execute a bond of Rs 5,00,000.00 before he joins the training at Hyderabad, to the effect that he would be bound to serve under the State Government of Assam for a period of 5 years on the completion of his training, the appellant did not submit the same at the time of his departure for training and the same was submitted only on 4.4.2001, i.e. after completion of his training. In fact, the appellant went for training at Hyderabad without having his leave granted by the appointing authority. On 8.10.2001, a notification was issued asking the appellant to join at Silchar Medical College Hospital on his return from training but the appellant did not join rather prayed for allowing him to join at Gauhati Medical College Hospital instead of Silchar Medical College. It is the case of the appellant that he is the only competent and qualified in Gastroenterology in this part of India and accordingly his service should be utilized at Gauhati Medical College Hospital. The appellant not having joined at Silchar Medical College, as directed, by a. notice dated 8.3.2002, the authority asked him to show cause as to why the bond of amount of Rs 5,00,000.00 should not be recovered from him for his violation of the terms and conditions of the bond to serve under the State Government of Assam. The appellant submitted his reply to the show cause notice on 4.5.2002.

3. The appellant again went to Japan for another course of training in spite of non-granting of any permission or any kind of leave by the authority. The appellant wrote to the State Government on 16.9.2002 and also to the respondent Department intimating that he would join at Gauhati Medical College immediately on his return from Japan. In this fashion, the notification dated 8.10.2001 by which the appellant was asked to join at Silchar Medical College continued to be evaded. It is worth mentioning herein that: in terms of the interim order passed by the Writ Court on 5.12.2003 the appellant was transferred from Silchar Medical College to Gauhati Medical College Hospital.

4. In their counter, the State respondents pleaded, inter alia, that the appellant was not entitled to any leave for undergoing higher studies at Hyderabad as he was rendering only for 1 year and 11 months of service, but, however, the Finance Department agreed to grant extra ordinary leave by relaxing Rule 14(2) (iv) of the Leave Rule, 1934 under FR and SR with the conditions that he will execute a bond of Rs. 5,00,000.00 that he would serve under the State Government after completion of his training course atleast for a period of 5 years and that he would apply for extraordinary leave for the purpose. Such application seeking extra ordinary leave with effect from the 20.3.1999 to 1.4.2001 and from 23.4.2001 to 23.10.2001 was submitted by the appellant on 7.3.2002.

The contention of the respondents is that in view of short duration of 1 year and

11 months of service period rendered by the appellant, he is not entitled to any leave as he has availed leave more than what he earned under the rules. It is further contended that the appellant was appointed at Gauhati Medical College Hospital against a vacant post at Silchar Medical College but the relevant notification was withdrawn in compliance with the direction issued by the Medical Council of India and also in view of the shortage of Doctors at Silchar Medical College and the appellant is not entitled to complain against the same, it having been resorted to on public interest. It is also contended that no question of payment of salary to the appellant for the period of his absence arises as the same is not permitted by any rule.

5. The learned Single Judge on consideration of the entire facts that emerged from the pleadings of the parties and on consideration of the submissions made by the learned Counsels dismissed the writ petition with costs, which is the subject matter of this appeal.

6. We have heard Mr. A.K. Bhattacharya, learned senior counsel for the appellant and Mr. B.J. Talukdar, learned Additional Senior Advocate on behalf of the respondents.

7. We are to put on record that although several points have been urged in the appeal memo, during the course of arguments of this appeal, the learned Senior counsel confined his submissions only to the point of regularization of the service of the appellant for his absented period. The learned senior counsel also made it clear that the appellant as a Government servant is to join in his post at Silchar Medical College, if so directed. Thus, in terms of the prayers made in the writ petition the only point that remains to be considered in this appeal is as to whether a Writ/direction can be issued directing the authorities to grant leave to the appellant for the period of absence for which there is no sanction from the Government.

8. In public service, generally, leave cannot be claimed as of right. The various aspects of leave are generally governed, regulated and guided by relevant service rules, fundamental rules with other administrative instructions, if any. The concept of leave in service law seems to be that it depends on the nature of the grant and that it is not a right of a Government servant for availing leave. A Public Servant has to formally apply for leave to the competent authority for grant of such leave and leave may be granted subject to observance of requisite formalities and as per entitlement according to Rules. Leave may be of different kinds, i.e., earned leave, medical leave, study leave and leave preparatory to retirement, etc. The entitlement for a period of leave is calculated on the basis of the length of service rendered by an employee. Order granting leave contains a commencement date and a termination date; after expiry of the leave granted to an employee, he should return to the service and such return is not at the discretion of the employee. The employee is bound to return to his duty after expiry of the leave period, unless permitted otherwise by the authority who granted the leave. Overstay and unauthorized absence after its expiry may entail

necessary consequences as per the relevant service rules. Leave salary is not entitled by an employee availing extra-ordinary leave unless specifically, allowed by the authority as per the authority on the basis of the relevant rule, if any. These are certain broad propositions regarding the incidence of leave available to a government servant.

9. The appellant was allowed go on training at Nizam's Institute of Medical Sciences, Hyderabad, after completion of one year and nine months of his service, by that time the appellant although had no leave to his credit to cover the period of training, but on the recommendation of the Finance Department the appellant was allowed extraordinary leave by relaxing the relevant Rule 14(iv) or Leave Rule 1934, under operation of FR & SR, with the following conditions-

(a) He must serve under the State Government after completion of training course at least for a period of five years.

(b) He should execute a bond of Rs. 5,00,000.00.

(c) He must apply for extraordinary leave.

10. The appellant did not submit any formal leave application but, however, on his return from training, after a long gap i.e., on 7.3.2002 he submitted an application praying for extra-ordinary leave with effect from 23.3.1999 to 1.4.2001, and from 23.4.2001 to 23.10.2001. The appellant also did not adhere to the terms of the bond by not joining at Silchar Medical College as directed for which a separate show cause notice was issued as to why the bond amount should not be recovered from him.

11. Be that as it may, it thus appears that the Government authorities agreed to grant extraordinary leave to the appellant by relaxing the Rule 14(iv) of the Leave Rule, 1934 for the period of his training at the Nizam Institute of Medical Sciences at Hyderabad. The appellant thereafter proceeded to Japan for having another course of training to which the Government did not agree. Under such circumstances, in our considered opinion, the case of the appellant does not fall within the purview of any such statutory rules or guidelines entitling him to grant leave or for regularization of his period of absence after the completion of the aforesaid training at Hyderabad from 20.3.1999 to 1.4.2001. In terms of the interim order of this court dated 5.12.2003, the appellant was allowed to join at Gauhati Medical College Hospital vide notification-dated 31.12.03. Admittedly, from 2.4.2001 till 31.12.2003, the appellant was absent from service without having granted any kind of leave nor there was any leave to his credit to cover up this period.

12. In the absence of entitlement of leave to his credit and in the absence of pointing out any specific provision in the relevant rules or regulations for such entitlement, we could not persuade ourselves to issue Writ as prayed for by the appellant by issuing direction to the respondent authorities to regularise the absented service period of the appellant, more particularly on failure of the

appellant to specify and point out any violation of any statutory right. The appellant not having expressed any grievance for posting him at Silchar Medical College Hospital as indicated above, we are not entering into that aspect of the matter.

We however, make it clear that the notification dated 31.12.2003, posting the appellant at Gauhati Medical College Hospital was issued in terms of the interim direction of the learned Single Judge dated 5.12.2003 passed in the writ petition, and such as interim direction do not confer any right on the appellant, the said notification being always subject to the final outcome of the writ petition and it cannot be claimed as a basis of staying at Gauhati Medical College Hospital.

13. From the records made available before us, we do not find that the respondent authorities have committed any error apparent on the face of the record or has committed any illegality, arbitrariness or jurisdictional infraction in passing the impugned notification. Leave not being a matter of right, more particularly in the absence of leave to the credit of the appellant as per the relevant service Rule, no Writ can be issued to the respondent authorities to regularise the period of absence, by granting his leave, except, of course, for the period allowed to him for undergoing higher study at Nizam Institute of Medical Sciences at Hyderabad by the Government. We do not find any justifiable reason to interfere with the decision arrived at by the learned Single Judge.

14. The learned senior counsel has also strenuously attacked certain observations made by the learned Single Judge in the impugned Judgment. We make it clear that observations, if any, made by the learned Single Judge shall have no bearing whatsoever upon the career/service prospects of the appellant. We also make it clear that learned Judge did not make any observations whatsoever against any of the counsel appearing on behalf of the appellant.

15. Subject to what has been stated above, this writ appeal stands dismissed, directing, however, the parties to bear their own costs.