(2012) 12 PAT CK 0070

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.17973 of 2010

Dr. Madan Kumar Pandey — APPELLANT

Vs

The State of Bihar — RESPONDENT

Date of Decision : 07-12-2012

Acts Referred:

Citation : (2013) 2 BBCJ 313 : (2013) 1 BLJud 310

Hon'ble Judges : Dr. Ravi Ranjan, J.

Bench : Single Bench

Advocate : Mr. Anil Kumar Tiwary, Advocate, for the Petitioner; Mr. Sanjay Kumar, A.C. to S.C.1 and Mr. Mani Kant Mishra (R-7) (A.G), for the Respondents

Final Decision : Allowed

Judgement

Dr. Ravi Ranjan, J. (Oral)—I have heard learned counsel for the petitioner and the State.

2. Through this writ application the petitioner seeks direction to the respondents to treat the extraordinary leave granted to him for higher study under Rule-85(5) of the Bihar Service Code read with notification dated 20.11.2003 and thereupon count the said period for the purpose of grant of payment of consequential benefits to the petitioner which has been granted to other similarly situated persons. The petitioner has been appointed on the post of Civil Assistant Surgeon on 4.8.1983. Petitioner had applied for study leave vide Annexure-2 and proceeded for M.S. course in General Surgery under anticipation that the study leave would be granted. Subsequently, he had obtained a degree of Master of Surgery (General Surgery) from Darbhanga Medical College in the Sessions 1982-84. A certificate to that effect has been issued by the Principal, D.M.C.H. which has been appended as Annexure-5. Thereafter, the petitioner again joined his service on 6.6.1985 in anticipation of posting and subsequently was posted at the Primary Health Centre, Rohtas and had joined there on 1.7.1985. Petitioner is presently posted as Sr. Resident at P.M.C.H. and is regularly working and his services have been confirmed. It appears that vide Annexure-6, the State

Government has adjusted the period of 4.10.1983 to 5.6.1985 as extraordinary leave under Rule 204 of the Bihar Service Code vide order dated 17.9.2009. However, it has been clarified in the order that the aforesaid period would not be counted for the purpose of pension. However, the petitioner is aggrieved that he would not be given any increment for the aforesaid period which is admissible for higher studies under Note (5) of Rule 85 of the Bihar Service Code. He has filed representation in this regard also before the Principal Secretary, Department of Health, State of Bihar, a copy of which is appended as Annexure-7.

3. A counter affidavit has been filed on behalf of the State taking stand that petitioner cannot get benefits of Rule-85 as the aforesaid period of petitioner''s absence has been regularized as extraordinary leave under Rule-204 of the Bihar Service Code and the study leave of the petitioner would not be counted as pensionable, which is apparent form Annexure-6 itself.

4. Petitioner has placed reliance upon letter contained in Memo No.9154(F) dated 20.11.2003 written to all the concerned clarifying that if a government servant has been granted extraordinary leave without pay for enhancement of his qualification and knowledge then that he can be considered for increment etc. in view of the provisions as contained in Rule-85 Note (5) of the Bihar Service Code. However, for that purpose the concerned government servant, after returning back and joining after such leave, should produce a certificate to show that from such study his knowledge has been enhanced which would be beneficial of the Government also.

5. In paragraph-8 of the counter affidavit, it has been stated in this regard that the aforesaid letter or notification would not have a retrospective effect and in the petitioner''s case Rule-204 of Bihar Service Code would only be applicable.

6. From appreciation of rival contention, following questions emerge for determination :-

(i) Whether the further educational qualification of M.S. in General Surgery achieved by the petitioner can be considered to be enhancement of his knowledge and beneficial for the State ?

(ii) Whether the petitioner''s case would be covered under Rule-85 Note (5) of the Bihar Service Code ?

7. Since both the issues are related and intertwined, they are being considered together. The Rule-85 Note (5) of the Bihar Service Code as well as Rule-204 of the Bihar Service Code are being re-produced as under for better appreciation :

"85 Note(5) Under the special order of the State Government in each case extraordinary leave when taken on account of ill health or for any other cause beyond the Government servant''s control or when taken for the purpose of study with a view to impose the Government servant''s professional qualification and knowledge may allowed to count for increment under clauses (b) and (c) of this rule :

Provided that, when a special order of this nature has been made by the State Government in favour of a Government servant proceeding on extraordinary leave for the purpose of study, such Government servant shall on return from leave produce satisfactory evidence in the form of a degree, diploma or other qualification, or in form of a certificate from the head of the institution where the course of study, has been prosecuted to show that he has profited from the course of study and in default of the production of such evidence by the Government servant, the State Government may record the special order allowing the period of extra ordinary leave to count for increment."

"204. (a) Subject to the conditions hereinafter specified, the State Government may grant special study leave to a Government servant to enable him to study scientific, technical or similar problems or to undergo a special course of instruction. Such leave is not debited against the leave account.

(b) These rules relate to study leave only. They are not intended to meet the case of Government servants deputed to other countries at the instance of Government, either for the performance of special duties imposed on them or for the investigation of specific problems connected with their technical duties. Such cases will be dealt with on their merits under the provisions of Rule 61. Such leave may be granted to a Government servant in the Public Health, Medical, Civil, Veterinary, Factory, Agricultural, Education, Public Works or Forest Department, or to any other Government servant to whom the State Government is of opinion that such leave should in the public interest be granted"

(emphasis mine).

8. From perusal of Rule-204, it appears that the State Government is empowered to grant special study leave to a government servant to enable him to study scientific, technical or similar problems or to undergo a special course etc. It has been stated that such leave is not debited against the leave account. However, in Rule-204, it has been clearly indicated that study leave can be granted to a government servant in the public Health, Medical, Civil, Veterinary, Factory, Agricultural, Education, Public Works or Forest Department, or to any other Government servant only if the State Government is of the opinion that such leave would be in the public interest.

9. The aforesaid provisions clearly discloses that the State Government can grant study leave only if it is of the opinion that such leave would be in the public interest. Thus, there would be no doubt that the State Government has regularized the period of study leave, even it is assumed to be under Rule-204, only after assuring itself that the same was required in public interest. That apart, Division Bench of this Court in Dr. Anil Prasad Gara and others v. The State of Bihar and others reported in 1991(2) PLJR 384 has held as under :

"8. x x x x We are living in an age of specialisation and the medical science is one branch, which has made tremendous strides abroad mainly on account of better facilities for getting specialised training. In this background, it is difficult to countenance this astounding proposition that grant of study leave for attaining speciality in a particular subject would not be in public interest x x x x."

10. While dealing with aforesaid issue in the same paragraph, the Division Bench has quoted a passage from the decision of the Apex Court rendered in Dr. Jagdish Saran v. Union of India Reported in AIR 1980 Supreme Court 820, which is again reproduced for better appreciation :

" In equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another in entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like post-graduate courses. After all, top technological expertise in any vital field like medicine is a nation''s human asset without which its advance and development will be stunted. The role of high grade skill or special talent may be less at the lesser levels of education, jobs and disciplines of social inconsequence, but more at the higher levels of sophisticated skills and strategic employment To devalue merit at the summit is to practicee with the country''s development in the vital areas of professional expertise. In science and technology and other specialised fields of developmental significance, to relax lazily or easily in regard to exacting standards of performance may be running a grave national risk because in advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nation''s talent lying latent can produce. If the best potential in these fields is cold shouldered for populist considerations garbed as reservations, the victims, in the long run, may be the people themselves. Of course, this unrelenting strictness in selecting the best may not be so imperative at other levels where a broad measure of efficiency may be good enough and what is needed is merely to weed out the worthless."

11. Thus, in my considered opinion, there is no doubt that after M.B.B.S., which is a general qualification for practise as degree of Master of Surgery (General Surgery) would definitely be a specialization and further enhancement in the qualification and knowledge of the petitioner which would be beneficial for the State also as, only after considering it in the public interest, the study leave of the petitioner has been regularized by the State vide Annexure-6. Accordingly, there would be no difficulty in holding that, in the case of the petitioner, Note-5 of the Rule-85 of the Bihar Service Code would definitely come into play which provides that if the extraordinary leave has been granted for the purpose of study with a view to enhance the government servant''s professional qualification and knowledge then the period should be allowed to count for increment under Clause (b) and Clause (c) of this Rule.

12. The plea taken in the counter affidavit that the letter as contained in Annexure-8 cannot have retrospective effect and, thus, cannot be applied in the case of the petitioner is wholly misconceived. Vide Annexure-8 no amendment

has been made in Rule-85. It has merely been clarified that it would be definitely applicable in the case of the government servants who have gone on study leave for enhancement of their professional qualification which would be beneficial of the State also.

13. Having held so, in my considered opinion, the State Government cannot deny the benefits of increment etc. to the petitioner for the period which has been regularized as study leave and during which the petitioner has definitely enhanced his professional qualification by acquiring a degree of Master of Surgery in General Surgery subject which would definitely be beneficial for the State also.

14. Accordingly, this writ application is allowed and the State authorities are directed to calculate the benefits of the petitioner for the concerned period and grant and sanction the same within eight weeks from the date of receipt/ production of a certified copy of this order failing which the petitioner would also be entitled for simple interest at the rate of 12% per annum to be calculated from the date the same became due till its final payment. It is made clear that the office of the Accountant General would have to also proceed accordingly for authorization after necessary sanction is made by the State Government.

