
(2019) 02 J&K CK 0122

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 290 Of 2019, IA No. 01 Of 2019

Dr. Sana

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 26-02-2019

Acts Referred:

Graduate Medical Education Regulations, 2000 — Regulation 52C

Citation : (2019) 02 J&K CK 0122

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : M. Y. Bhat, R.A. Bhat, Shah Aamir

Final Decision : Disposed Off

Judgement

1. The short grievance projected by the petitioner in this petition is that she after completing MBBS Course, competed for admission to the Post Graduate Course (for short "PG"). On the basis of her merit, petitioner was admitted in the Department of Gynaecology and obstetrics for undergoing three years MD Course vide Order No. SIMS/ACAD/343 of 2018 dated 05.07.2018 issued by SKIMS, Soura, Srinagar. The petitioner claims that since her admission in the MD Course in the May, 2018, she has been pursuing her three years Post Graduate Course. While the petitioner was undergoing the aforesaid Post Graduate Course in the SKIMS, Soura, she came to be appointed as Medical Officer vide Government Order No. 49-HME of 2019 dated 14.01.2019 and was thereafter adjusted as Causality Medical Officer in the Government Medical College, Anantnag. The petitioner claims that in compliance to the order, she has joined on the appointed post on 24th January, 2019.

2. The petitioner submits that since she is already pursuing her PG Course in the SKIMS, Soura and is performing the duties akin and similar to that of Medical Officers, she would be permitted to pursue her PG Course by treating her to be on deputation. She also claims the benefits as are available to regularly appointed employees on deputation to the other service/cadre. She has cited

some examples to make good her point that the Government from time to time had been showing indulgence and permitting the candidates like the petitioner to complete their PG course by treating them on inter cadre deputation.

3. Mr. Shah Aamir, learned AAG who represents the respondents was incidentally present in the Court and was asked to assist in the matter. Mr. Shah Aamir, learned AAG submitted that the petitioner was appointed as Medical Officer/ Causality Medical Officer subsequent to her admission in the PG Course in the SKIMS, Soura, Srinagar and therefore, the petitioner cannot be permitted to sail in two boats. She may have to choose between the two. The appointment on the post of Causality Medical Officer in the Government Medical College is a permanent appointment and Government employee while being in the employment of respondents cannot be permitted to pursue his or her academic / professional pursuits.

4. Having heard learned counsel for the parties and perused the record, I am of the view that the stand taken by the respondents is just, fair and rational. No recruitment rule or statutory provision was brought to my notice which would permit such arrangement to continue. As noted above, petitioner has already joined her duties as Causality Medical Officer and in case she intends to continue with her PG Course in Gynaecology and obstetrics, she may have either forgo the appointment or apply to the respondents for study leave, if permissible. She however, cannot be permitted, on her own, to pursue PG Course in the SKIMS Soura while being in the service of the respondent department. Such unauthorized absence from duty may entail loss of appointment and discharge of the petitioner from her engagement. Learned counsel for the petitioner took this Court through different provisions of The Post Graduate Medical Education Regulations, 2000, framed under The Indian Medical Council Act, 1956 to bring home the point that PG students while undergoing his/her course would inter alia perform the duties of Medical Officer as well and, therefore, if the petitioner is permitted to complete her PG Course in the SKIMS, Soura, neither the public interest nor health care will suffer in any manner. It is, therefore, urged that permitting the petitioner to pursue her PG Course, which would hone her skills in the Medical Profession is in larger public interest. It is, thus, claimed that the interest of justice would demand that the petitioner is treated to be on deputation till she completes her three years PG Course in the SKIMS, Soura, Srinagar. He relies upon the judgement of Dr. Sunil Kumar Raina vs. State 2012 (IV) SLJ 1143.

5. I am not impressed by the submissions of learned counsel for the petitioner nor the judgement relied upon is applicable to the facts of this case. The moment, the petitioner accepts the appointment and joins her duties as Causality Medical Officer; she becomes the Government employee bound by the rules and regulations governing the employees holding the civil posts under the State. To my notice, other than the study leave rules issued by the Government vide SRO 274 of 2013 dated 30th May, 2013, there is no other provision which

permits a regular appointed employee to complete his/her Course of study which he or she might have started prior to the appointment. Neither any such rule was brought to my notice by learned counsel appearing for the parties. The plea of the petitioner that, she should be treated to be on deputation is also without substance and cannot be accepted. It is however, true that the respondents vide communication No. HD/Legal/Gaz/29/MR-845/2011-13/K dated 05.04.2016 have taken a decision that in service Medical Officers who were selected for PG Course before 30.05.2013 would be treated as on deputation and thereafter all such cases are to be considered under study leave rules issued vide SRO -274 of 2013 dated 30.05.2013. It is also important to note that deputation under the civil service regulation from Government to non-Government organization, within or outside the State Government or the Central Government or the other Government is regulated by the Regulation 52-C.

6. The perusal of Regulation 52-C would make it abundantly clear that a deputation, in essence, is a transfer of an employee from the Government to the non-Government Organization. After deletion of the Regulation 52-C vide SRO 192 dated 28th May, 2007, the transfer on deputation from one department of the Government to another department is also not now permissible. Be that as it is, the deputation of a Government Employee to Professional or training Institute is not envisaged by the Civil Services Regulation or the rules regulating the recruitment and the condition of service of the Government employees.

7. In view of the aforesaid discussion, it is clear that prayer of the petitioner that she should be treated to be on deputation to the SKIMS, Soura, Srinagar for undergoing PG Course is not permissible under law and therefore, cannot be accepted. However, the petitioner, if eligible in terms of SRO 274 of 2013, is free to apply for study leave. It is true that she may not be eligible to get the study leave till she completes her three years mandatory service as required under the aforesaid SRO. But the Government, in appropriate cases as also to mitigate individual hardship, may relax the aforesaid three years prescription. The minutes of meeting held in the office chamber of the Commissioner/ Secretary Health and Medical Education on 30th May, 2017 on the subject throws considerable light on the issue in hand. The copy of the minutes of the meeting were brought to the notice of this Court by Mr. Shah Aamir, learned AAG during the course of the arguments and the same have taken on record.

8. The decision taken in the aforesaid meeting in paragraph (6) is relevant and is noticed hereunder:-

"...6. It was accordingly decided that the present position may be allowed to continue i.e. the in-service doctors who have completed three years of service/probationary period may be allowed to pursue PG Course as per the study leave rules notified vide SRO 274 of 2013 dated 30.05.2013. However, to facilitate the career progression of the in-service doctors who have not completed their three years of service/probationary period may also be allowed to pursue their PG Courses with the condition that the period spent by them on PG Courses shall be

treated as leave whatever kind due or dies non as the case may be. Since the department has taken a principled stand that after 30.05.2013, the in-service doctors shall be allowed to pursue PG Courses as per the study rules notified vide SRO 274 of 2013, any deviation at this stage may invite unnecessary litigations and administrative difficulties."

8. In view of the foregoing discussion and analysis, this Court, does not find any merit in this petition. The petitioner cannot be permitted to pursue her PG Course in the SKIMS, Soura, Srinagar and simultaneously continue her employment as Causality Medical Officer in the Government Medical College, Anantnag. If, she intends to continue her employment as Causality Medical Officer, she is under obligation to perform her duties on the post. She, however, is entitled to approach the respondents for grant of study leave in terms of SRO 274 of 2013 as also decision taken in the meeting on 30th May, 2017. Should the petitioner adopt the aforesaid course and applies for study leave, respondents would consider the same on the touch stone of the study leave rules promulgated vide SRO 274 of 2013 dated 30th May, 2013 and keeping in view the decision taken by the respondent in a meeting held under the Chairmanship of Commissioner/Secretary Health and Medical Education dated 30th May, 2017 provided the same is intact and has not been reviewed, modified or withdrawn.

9. This petition accordingly is disposed of in terms aforementioned.