
(2011) 12 SHI CK 0284
In the High Court Of Himachal Pradesh
Case No : CWP No. 748 of 2011-A

Dr. Vijay Kumar and Others

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Central Civil Services (Leave) Rules, 1972 — Rule 51

Citation : (2011) 12 SHI CK 0284

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Justice Rajiv Sharma, Judge

1. Entrance test for the post of Kaya Chikitsa M.D. was held by the Himachal Pradesh University on 6.12.1998. Petitioners sat in the examination and qualified the same and joined M.D. Kaya Chikitsa in Government Ayurvedic College, Paprola on 3.1.1999. Petitioners joined their duties on 5.1.2002 after completion of M.D. course. However, the petitioners were not granted three years study leave on the basis of letter Annexure P-1 dated 22.8.1997. Petitioners made several representations for redressal of their grievance. They were told that on the basis of letter dated 16.6.2009 they are not entitled to get three years leave. In other words, their study leave was restricted to 24 months.

2. Mr. Dilip Sharma has strenuously argued that the petitioners were entitled to get three years study leave as per letter dated 22.8.1997. He then argued that his clients have altered their position to their detriment on the basis of Annexure P-1 and the respondent-State is estopped from restricting study leave to 24 months instead of 36 months. He further argued that the very basis to deny the study leave of 36 months is fallacious since the petitioners have never claimed themselves to be the employees of Central Health Services. He also contended that clarification Annexure P-8 dated 16.6.2009 shall apply prospectively and will

not destroy the vested/accrued rights of the petitioners to get the benefit flowing from Annexure P-1.

3. Mr. Vikas Rathore, learned Deputy Advocate General has vehemently argued that in fact letter dated 22.8.1997 was withdrawn on 19.7.2000 and it is only after seeking clarification from the Ministry of Personnel, PG and Pensions and Health and Family Welfare, vide letter dated 16.6.2009 it was decided to restrict the study leave to 24 months instead of 36 months.

4. I have heard the learned counsel for the parties and have perused the pleadings carefully.

5. It will be apt at this stage to reproduce text of Annexure P-1 dated 22.8.1997, which reads thus:

I am directed to say that the maximum amount of study leave, which may be granted to a Government servant, is ordinarily twelve months at any one time and twenty four months in all (inclusive of similar kind of leave for study or training granted under any other rules) in accordance with the provisions contained in Rule 51 of CCS (Leave) Rules, 1972. There are a number of special course of study consisting of higher studies in a professional or technical subject having a direct and close connection with the sphere of duties of Government servants for which the Government servants are sponsored by the concerned departments and the duration of such course is three years or more at a stretch.

A proposal to allow study leave for more than two years in such cases has been under examination of this Department. It has now been decided that the maximum amount of study leave shall be three years as a special case in respect of all such cases where the course of higher studies in a professional or technical subject having a direct and close connection with the sphere of duties of a Government servant was three years or more than three years at a stretch.

The other terms and conditions regulating the study leave shall remain unchanged and those orders will be applicable with immediate effect.

6. It is evident from the text of letter dated 22.8.1997 that a conscious decision was taken that maximum period of study leave will be three years as a special case in respect of those cases where the course of higher studies in a professional or technical subject having a direct and close connection with the sphere of Government servants. In the instant case, there is a close proximity with the duties being discharged by the petitioners after acquiring the higher professional degree of M.D. Kaya Chikitsa. Petitioners sat in the examination conducted by the Himachal Pradesh University and on the basis of merit alone, they were admitted to M.D. Kaya Chikitsa in Government Ayurvedic College, Paprola on 3.1.1999. They have successfully completed M.D. course.

7. As far as letter dated 19.7.2000 relied by Mr. Vikas Rathore is concerned, suffice it to say that though the decision was taken to restrict the study leave as per provisions of Central Civil Services (Leave) Rules, 1972, however, the

Government was pleased to order that the cases of the Government servants, who had been granted study leave as per provisions of Annexure P-1 dated 22.8.1997 will not be re-opened. Thus, the case of the petitioners was also squarely covered by letter dated 19.7.2000 itself. Their cases were to be regulated under Annexure P-1 since they have completed the course with effect from 3.1.1999 to 5.1.2002.

8. Now, the Court will advert to Annexure P-8 dated 16.6.2009. What has been stated in letter dated 16.6.2009 is that the case of the petitioners will not be considered since they were not part of Central Health Services. It was not the case of the petitioners that they belong to Central Health Services. Their case simply is that on the basis of promise held out vide Annexure P-1, they joined Kaya Chikitsa M.D. course and have successfully completed the same and are entitled to sanction 36 months study leave. Moreover, letter dated 16.6.2009 will apply prospectively and will not apply retrospectively.

9. Mr. Vikas Rathore has also drawn the attention of the Court to letter dated 6.5.2009 issued by the Deputy Secretary to the Government of India, vide Annexure R-2 addressed to the Principal Secretary (Ayurveda), Government of Himachal Pradesh. It is evident from this letter that the study leave has been increased from 24 months to 36 months for prosecuting post-graduation courses in respect of Central Health Services Officers on 26.10.2007. The Government of India has taken a conscious decision that for post-graduation courses the candidates belonging to Central Health Services will be getting 36 months study leave instead of 24 months. Even on that analogy, case of the petitioners was covered to get study leave for a period of 36 months instead of 24 months.

10. The action of the respondents to deny the petitioners study leave for 36 months and to advise them to apply leave of the kind due is arbitrary. Letters dated 22.8.1997 and 19.7.2000 cannot be overlooked while taking decision to deny study leave to the petitioners for a period of 36 months instead of 24 months.

11. Mr. Vikas Rathore has also faintly argued that even as per rule 51 of the Central Civil Services (Leave) Rules, 1972, the maximum period of study leave is 24 months. However, the fact of the matter is that despite rule 51 of the Central Civil Services (Leave) Rules, 1972, respondent-State has taken a conscious decision to increase the study leave from 24 months to 36 months and at belated stage the benefit could not be denied to the petitioners, that too, when they have successfully completed Kaya Chikitsa M.D. course. Now, the patients are getting better health services after the petitioners have acquired post-graduation qualification.

12. Accordingly, in view of the observations and discussions made hereinabove, the writ petition is allowed. Annexures P-8 dated 16.6.2009, P-9 dated 28.8.2009, P-11 dated 21.9.2010 and P-14 dated 9.2.2011 are quashed and set aside. Respondents are directed to sanction study leave to the petitioners as per

Annexure P-1 dated 22.8.1997 with all the consequential benefits. No costs.