

(2012) 09 RAJ CK 0095

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5586 of 2012

Dr. Yogendra Taneja and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 10-09-2012

Acts Referred:

Rajasthan Service Rules, 1951 — Rule 112, 97

Citation : (2013) 1 CDR 250 : (2013) 1 RLW 667

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Advocate : M.C. Bhoot, assisted by Mr. Arpit Bhoot, for the Appellant; G.R. Punia and Additional Advocate General, assisted by Mr. Yashpal Khileree, for the Respondent

Final Decision : Allowed

Judgement

Govind Mathur, J.

REPORTABLE

1. The Rajasthan University of Health Sciences, Jaipur conducted Pre-P.G. Medical Entrance Examination - 2011 for admission to M.D./M.S./Diploma Courses in medical colleges of Rajasthan. Out of the total seats available, 50% seats in the courses referred above were to be filled in as per the allocation made by the Director General of Health Services, Government of India, New Delhi, on the basis of the result of All India Competitive Entrance Examination for Post Graduate Courses on open merit and the remaining 50% of the total seats were to be filled in on the basis of the merit in Pre P.G. Medical Entrance Examination. In the seats available, a further allocation is prescribed for the persons who are in employment of the State of Rajasthan and eligibility for such candidates is as under:-

(A) Applicable to In-service Category :-

Candidates seeking admission to M.D./M.S./Diploma Courses should be in service of State Government of Rajasthan and below the age of 45 years as on 30.04.2011 and should have :

- (1) Obtained MBBS qualification from Medical College recognized by MCI.
- (2) Completed satisfactorily one year's compulsory rotating internship.
- (3) Obtained registration from Rajasthan Medical Council. (Provisional or Permanent). The candidates registered with other Medical Council are required to submit RMC certificate at the time of Counselling.
- (4) Secured at least 50% marks (40% in case of natural born SC/ST/OBC/SBC and 45% in case of locomotor disable candidates) in the Pre-P.G. Medical Entrance Examination 2011.
- (5) Completed at least THREE years of Govt. service in Rural areas of the State of Rajasthan or TWO years of continuous service of Rural areas of Desert/Hilly or scheduled area of the State [Rural areas are defined as a rural area where Rural Allowance is admissible to the doctors] on 30-4-2011.

The candidates would be required to submit a certificate (Format enclosed with the form) to above effect duly signed by the Director, Medical and Health Services, Government of Rajasthan, Jaipur, failing which his/her application will not be considered.

The petitioners faced the process of selection and were admitted to Post Graduation courses against the seats allocated to in-service candidates. While getting admission in the course concerned, the petitioners submitted a surety bond for an amount of Rs. 5 lacs with an undertaking to get the same recovered in the event of leaving the course before its completion. A personal bond was also furnished by the petitioners for serving the State Government for at least 10 years after completion of the Post Graduation course and to pay a sum of Rs. 10 lacs in the event of leaving the service prior to the period aforesaid by availing voluntary retirement or resignation or otherwise.

2. The petitioners, who are in employment of the State of Rajasthan as "Medical Officer", on admission to the Post Graduation course, were relieved from their place of posting and were attached to the hospital associated with the medical college concerned. The petitioners and the persons alike, though continue with the designation of "Medical Officer", are commonly called as "Resident Doctors". The Resident Doctors are supposed to be on duty for 24 hours a day and are required to discharge the duties of treating doctors with the unit of medical specialty. In general, it can be said that a Resident Doctor is a person who is having a Graduation level medical degree and to have Post Graduation degree in some medical specialty, he practices under the supervision of senior and experienced physicians/surgeons in a teaching hospital. The persons admitted to Post Graduation course being in-service candidates discharge all duties of Resident Doctors in addition to the same medical duties discharged by them prior

to admission in the course concerned. Suffice to mention here that the persons admitted in Post Graduation course as non-service candidates are also known as "Resident Doctors" and for all purposes, they too are supposed to discharge the same duties as discharged by the in-service candidates, but they are not abide by any bond for mandatory service with the State Government for at least 10 years after completion of the Post Graduation.

3. It is relevant to mention here that as a general practice, from last more than a decade the in-service Resident Doctors while undergoing Post Graduation course were treated on duty without availing study leave. The State Government paid them full emoluments as they were getting prior to their admission to the Post Graduation course. They were also availing annual grade increments and several other service benefits including leaves. In continuance of the practice prevailing, the petitioners were also relieved from the place of their posting with a direction to report at the medical college concerned for admission in Post Graduation course. They were paid regular emoluments too, however, an order dated 02.03.2012 then was passed making the sanction for undergoing P.G. course subject to acceptance of one condition from the two mentioned below:-

(1) As per the prescribed eligibility and terms under Rule 110-112 of the Rajasthan Service Rules, 1951 (for short, hereinafter referred to as "R.S.R."), two years" study leave and one year"s extraordinary leave shall be sanctioned and for that, stipend shall be paid in accordance with the order of the Department of Medical Education dated 09.12.2009. No salary or other payment shall be made to a doctor by the State Government except the stipend.

(2) Three years" extraordinary leave be sanctioned to in-service candidates and stipend be paid to them as per the order dated 09.12.2009. No salary or other pay shall be paid to a doctor by the State Government for availing stipend.

4. By another order dated 29.03.2012, it was clarified that the order dated 02.03.2012 shall be enforced from the date of its issuance and the in-service Resident doctors shall be entitled to claim pay as earlier upto 01.03.2012.

5. In view of the factual position noticed above, the petitioners are entitled to have full emoluments as earlier upto 01.03.2012, but subsequent thereto, they were supposed to opt one mode from the two referred above to have stipend but not salary, as allowed earlier. Being aggrieved by the decision of the Government of Rajasthan for grant of stipend instead of complete emoluments with other service benefits, this petition for writ is preferred.

6. The argument advanced by Mr. M.C. Bhoot, learned Senior Advocate, assisted by Mr. Arpit Bhoot, appearing on behalf of the petitioners, is that the respondents from last several years were making payment of emoluments to in-service Resident Doctors alongwith other service benefits and the petitioners with same expectation got admission in the Post Graduation course. Any change in the quantum and mode of payment and denial of other service benefits is highly unjust, arbitrary and in contravention of the doctrine of "legitimate expectation".

To provide extra strength to the contention, it is submitted that the Resident Doctors are having two distinct classes; one is in-service doctors and another is non-service doctors, though both are required to discharge the same duties and acquire similar kind of knowledge, but the in-service Resident Doctors are abide to serve the State of Rajasthan for a period of at least 10 years after completion of Post Graduation and against such bonding they were treated on duty while undergoing Post Graduation, thus, a distinction was existing among the Resident Doctors and they were forming two separate classes. The non-service Resident Doctors from the very inception were entitled for stipend only.

7. Per contra, as per the respondents, the in-service Resident Doctors while undergoing Post Graduation avail study leave as per Rule 110 of the R.S.R. with the conditions prescribed under Rule 112 of the R.S.R., thus, they are not entitled for any amount beyond the permissibility under the rules. A stipend is admissible to all the Residents, as such, no wrong exists in executing the decision of the State Government notified vide order dated 29.03.2012.

8. To substantiate the contention, reliance is placed upon the judgment of Hon"ble Supreme Court in State of Rajasthan Vs. Sushil Sharma (Civil Appeal NO. 6283/2001) decided on 10.08.2001 and also upon two judgments of this Court in Dr. Anant Kotia & Ors. Vs. State of Rajasthan & Ors. (S.B. Civil Writ Petition No. 8571/2012) decided on 30.05.2012 and in a batch of writ petitions led by Smt. Suman Kumari Vs. State of Rajasthan & Anr. (S.B. Civil Writ Petition No. 4415/2010) decided on 30.08.2011.

9. Mr. G.R. Punia, learned Senior Advocate and Additional Advocate General, assisted by Mr. Yashpal Khileree, further emphasized that as a matter of fact, a definite number of seats are earmarked for in-service medical practitioners for having Post Graduation course, therefore, an undertaking was sought from them to serve the State for at least 10 years after completing the Post Graduation. The allocation of certain number of seats to in-service medical practitioners itself is an extra benefit to such persons and nothing more than that can be prescribed.

10. Heard Learned Counsel for the parties and considered the rival contentions.

11. Before coming to the arguments advanced, I would prefer to discuss the judgments cited by the learned Additional Advocate General as the precedents covering the controversy.

12. The first judgment relied upon is State of Rajasthan Vs. Sushil Sharma (supra), wherein the Hon"ble Apex Court held that as per Rule 112 of the R.S.R., any person who avails the study leave would be entitled to only half of the salary. For ready reference, the entire order is quoted below:-

The only question which arises for considerations is whether the Doctors like the respondents who take study leave are entitled to get full pay or not. It is not in dispute that prior to the amendment of the Rajasthan Service Rules 1951 in 1979, the original rule contemplated that whenever an employee went on study

leave he would be treated as being on deputation and would thereby be entitled to be paid full salary. On 16th June, 1979 Rule 112 was amended and as a result thereof, read with Rule 97 "whenever an officer went on study leave he was to be entitled to half pay leave only".

The respondents went on study leave and claimed full salary on the ground that some other doctors similarly situate had been allowed full salary by regarding them as being on deputation. In view of the aforesaid fact the writ petitions were allowed. Hence this appeal.

Mr. Pallav Sisodia, Learned Counsel for the respondent draws our attention to an order which had been passed on 13th November, 1998 in the case of three other service doctors who while being nominated for filling up available vacancies for studying in the course of Ayurved Vachaspathi (M.D.) were also permitted to work on the existing posting and thereby they become entitled to get full salary. It is submitted by the Learned Counsel for the respondent that discriminatory treatment cannot be meted out by the appellant-State.

The rules make it quite clear that any person who goes on a study leave would be entitled to only half the salary. In the present case, neither the respondents were sent on deputation nor were they required to continue to discharge their existing duties in addition to their undertaking the course of study. This being the position, the respondents were not entitled to receive any salary in addition to one contemplated by Rule 112 read with Rule 97 as amended in 1979. As far as the argument placed on Article 14 is concerned, it is now being well-settled that two wrongs do not make a right. Merely because some other officer has been given an unwarranted favour can be no ground for the rules being allowed to be violated and payment made out of the public exchequer when it is not due. While allowing these appeals, we would also expect the appellant-State to see that rules are not circumvented or violated as seem to have been done in the cases other than those of the respondents.

With these observations, the appeals are allowed and the decisions of the High Court are set aside.

13. In the case aforesaid, the Hon"ble Supreme Court was dealing with the case of the persons who went on study leave and desired parity with other persons who were treated on deputation as a consequent to a statute. In the case in hand, neither the petitioners applied nor availed the study leave. The respondents also never offered for payment of salary to them as contemplated under Rule 112 read with Rule 97 of the R.S.R. The respondents under the orders impugned have prescribed for payment of stipend only. It is, thus, clear that the case of the petitioners is on different pedestal than the case of the persons subjected in the case of State of Rajasthan Vs. Sushil Sharma (supra).

14. The other case on which heavy reliance is placed by learned Additional Advocate General is of Dr. Anant Kotia (supra). In the case aforesaid, while challenging the order dated 29.03.2012, the argument advanced was that the

Post Graduation course is nothing but part of the job, thus, one should not be compelled to take study leave while undertaking Post Graduation Course. The court negated the argument by holding that:-

It is necessary to clarify that PG Course in Medical is not meant for in service candidates only so as to reckon it as a part of the job. The PG Course is available even for those not in service. Thus, PG Course cannot be said to be part of the job.

The issue raised herein otherwise has already been determined and decided by the Hon''ble Apex Court holding that those doctors who are undertaking higher studies are not entitled to the deputation allowance but would be entitled to the study leave. Despite the judgment of the Hon''ble Apex Court, Medical Department was extending benefit of regular salary to those doctors who were undertaking PG course. Aforesaid was also noticed by this Court while deciding the matter pertaining to the Nursing Courses. Therein, detailed directions were given not to flout the judgment of the Hon''ble Apex Court. Reference of the judgment of this Court in the case of Smt. Suman Kumari versus State of Rajasthan and another (SBCWP No. 4415/2010 and 15 other petitions) is relevant wherein judgment of the Hon''ble Apex Court has been considered.

The direction of the Hon''ble Apex Court is after taking note of the provisions applicable to the present matter after amendment in the RSR. The relevant Rule of the RSR was amended so as to provide study leave with half wages only. The maximum duration of the study leave is of two years and as per amended Rules 110 and 112 of RSR, the respondents have issued order dated 29.03.2012 not only in accordance with the rules applicable, but even as per the direction of the Hon''ble Apex Court and of this Court holding that contrary to the judgment of the Hon''ble Apex Court, no one should be given the benefit of full wages during the period of study. Accordingly, direction sought in the present matter cannot be granted.

Rule 7(8)(d) of the RSR has no application in the present matter and if respondents by default have taken bonds in reference to Rule 7(8)(d) of the RSR, then also due to their default, legal position cannot be altered more so when it has already been settled by the Hon''ble Apex Court as well as this Court. It is otherwise seen that despite judgment of the Hon''ble Apex Court, respondents were extending the benefit of full salary and therefore only detailed directions were given by this Court in the judgment referred above. If the respondent department was ignorant about the judgment of the Hon''ble Apex Court as well as Rules, it cannot be resulted into the benefit of petitioners. The PG Course is available not only to in service candidates but those who are not in service. The quota for both the category is defined separately, thus it cannot be reckoned to be a training.

15. In the case of Dr. Anant Kotia (supra), a coordinate Bench of this Court relied upon the judgment of the Hon''ble Apex Court, details of which are not given in

the judgment, however, as per the learned Additional Advocate General, the judgment concerned is the State of Rajasthan Vs. Sushil Sharma (supra) only. I have already discussed above that the judgment aforesaid was given totally in different context and not for the persons like the petitioners who joined the Post Graduation course without availing study leave. The petitioners were admitted to the course concerned on being reported at the medical college under the instructions of the competent authorities of the State Government without having any instruction to have study leave. So far as the position of rules is concerned, suffice to mention that the petitioners neither applied for any study leave nor the same was granted to them for joining the Post Graduation course. The order passed by the competent authority while relieving the petitioners to report at the medical college reads as under:-

16. The order aforesaid nowhere refers for any study leave. The respondents have also not disclosed the order dated 29.06.2011 referred in the letter aforesaid.

17. Be that as it may, the respondents paid regular salary to the petitioners on their admission to the Post Graduation course and the entitlement for that payment remained in currency, even as per respondents upto 01.03.2012, thus, it is clear that no study leave was granted to the petitioners and the question of availing study leave at the first instance came on surface only on issuance of the orders impugned. The petitioners while getting admission to the Post Graduation course were treated in regular service, hence, all emoluments and service benefits were accorded to them. The reason for having the consistent practice of making payment of complete emoluments and other service benefits is quite obvious as the in-service Resident Doctors are supposed to serve the State Government for at least 10 years after having Post Graduation Degree. In the case of Dr. Anant Kotia (supra), learned Single Judge relied upon an order of the Hon"ble Apex Court that is not applicable in the cases where no study leave is availed and also being based on the provisions those that came in operation only in the event of availing study leave, but that is not the position in the present case. As such in the case of Dr. Anant Kotia (supra), the reliance of the judgment of Hon"ble Supreme Court (if that is of the case of Sushil Sharma) is misplaced.

18. The other cases relied upon are pertaining to the persons from para medical service who availed study leave and such persons are certainly entitled for getting salary as per the provisions of Rule 97 and 112 of the R.S.R. The present petitioners, as already noticed above, did not apply for study leave and that was not required in view of the consistent practice available.

19. In the case in hand, the following are the facts admitted:-

(1) The respondents from last several years were treating the in-service Resident Doctors on regular duties, thus, were paying them full emoluments and all other benefits attached to the service.

(2) The petitioners participated in the Pre-P.G. Medical Entrance Examination -

2011 after obtaining permission from the respondents and on being selected, they were relieved to report at medical college concerned without applying and grant of study leave.

(3) The petitioners are entitled even as per the respondents to have all emoluments with service benefits upto 01.03.2012, meaning thereby upto the date aforesaid, the respondents treated the petitioners on Government duty, though they were availing studies and experience in Post Graduation Course.

(4) The respondents never apprised the petitioners before issuance of the orders impugned that they will have to avail the study leave and will get only stipend.

(5) The petitioners, if now leave the Post Graduation course, they have to pay a sum of Rs. 5 lacs to the respondents in view of the undertaking furnished by them.

(6) The petitioners are also abide to serve the State Government for at least 10 years after completion of the Post Graduation course and in the event of non-performance of the undertaking given by them, they have to pay a sum of Rs. 10 lacs to the State.

(7) The State Government even under the orders impugned is intending to pay stipend to the petitioners and not the salary as per the provisions of Rule 112 read with Rule 97 of the R.S.R.

20. With the admitted facts noticed above, I have examined the case of the petitioners who are undergoing P.G. course as in-service candidates. The allocation of the seats to in-service candidates is neither any reservation nor any extra benefit to the petitioners, but a device adopted to have highly skilled medical practitioners at Government hospitals. In a democratic set up, a welfare State is supposed to provide effective medical aid to all sections of its citizens and for that purpose, a huge number of Government hospitals, dispensaries and other health centers are in operation at different parts of the State. Such hospitals, dispensaries and health centers are in need of highly educated medical practitioners. It is not in dispute that the State from last number of years is facing dearth of highly educated skilled medical practitioners in different specialties. To meet this situation, an allocation of certain number of seats in Post Graduation courses was made for in-service doctors with clear understanding that they have to serve with the Government hospitals, dispensaries and other health centers, as the case may be, for at least 10 years. To encourage admission in P.G. courses from among the in-service medical practitioners, the State Government provided full emoluments and other service benefits to the selected incumbents. The petitioners in view of the prevailing practice participated in the competitive examination and were selected for admission against the seats earmarked for in-service candidates. While applying to participate in the competitive examination and also while joining the course concerned, they were under a definite belief that the State Government shall pay them regular emoluments and all other service benefits. They never thought

about discontinuance of the regular emoluments and other service benefits while undergoing the Post Graduation course. The respondents quite abruptly discontinued the existing practice adversely affecting the expectations of the petitioners. The petitioners who joined the Post Graduation course only on being satisfied for getting full salary while undergoing Post Graduation course, if now leave the course concerned, they have to pay a sum of Rs. 5 lacs to the respondents in view of the bond executed by them. In totality, it can very well be said that if the respondents be now permitted to deviate from the consistent practice of making full payment of emoluments with all service benefits including leaves and grant of annual grade increments, then that shall cause a serious damage to the legitimate expectations of the petitioners. The same is highly unjust and arbitrary.

21. Suffice to mention here that no provision of R.S.R. or otherwise shall be violated if the respondents permit the petitioners to continue in Post Graduation course by treating them on duty. Such treatment is all the more required on the count that the petitioners were admitted to the courses concerned in that capacity only. The position would have been different if the respondents at the inception had conveyed the petitioners for availing study leave as per the provisions of R.S.R.

22. Having considered all the facts of the case and the legal position discussed above, I find the claim of the petitioners justified. Accordingly, this petition for writ is allowed. The orders dated 02.03.2012 (Ex.6) and 29.03.2012 (Ex.7) are declared inoperative to the extent they relates to the petitioners, who were admitted to Post Graduation courses as a consequent to their selection by facing Pre-P.G. Medical Entrance Examination - 2011 and were declared entitled for receiving full emoluments with other service benefits upto 01.03.2012. The petitioners are further declared entitled to have full emoluments alongwith other service benefits while serving as Resident Doctors. No order as to costs.