

(2023) 01 TEL CK 0037

In the Telangana High Court

Case No : Writ Petition Nos. 24053, 24067 Of 2018

Dr.Jukanti Yamuna Devi

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 31-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 21

Telangana State And Subordinate Service Rules, 1996 — Rule 2(14), 2(14)(a)

Writ Proceedings Rules, 1977 — Rule 12(i)(a)

Citation : (2023) 01 TEL CK 0037

Hon'ble Judges : K.Sarath, J

Bench : Single Bench

Advocate : P Mehar Srinivasa Rao

Final Decision : Allowed

Judgement

1. These two Writ petitions are filed seeking the following relief:

"....to issue a Writ, more specifically in the nature of Writ of Mandamus, declaring the action of the respondent No.2 in passing the impugned order in Proc.No.2772/OP&IMS/A2/2015 dated 23.10.2017 (which is served in the month of April, 2018 rejecting the claim of the petitioners for payment of pay and allowances with all benefits for prosecuting Post Graduation (PG) Course i.e. from 13.08.2014 to 12.08.2017 and 01.07.2015 to 30.06.2018 respectively and in treating the period of study as Extraordinary Leave (EOL) in Violation of orders in W.P.No.5345 of 2010 and 41280 of 2016 dated 28.09.2010 and 15.03.2017 respectively, is arbitrary, illegal and unjust and in violation of Article 14, 16 and 21 of the Constitution of India and in violation of State Subordinate Service Rules, 1996 and Fundamental Rules and set aside the impugned proceedings and to direct the respondents to pay the pay and allowances including all the benefits to the petitioners for Study Period by treating as 'on duty' under F.R 9 (6) (b) and State Subordinate Rule 2 (14) (a) as the petitioners prosecuted the P.G Course on deputation, for which the petitioners are entitled"

2. Heard Sri P.Mehar Srinivas Rao, Counsel for the petitioners in both the petitions and Sri A.Sai Chakravarthy, Learned Government Pleader for Services-IV appearing for respondents.

3. Both the writ petitions are filed against one and the same impugned order. In view of the same, both the petitions were heard together and are being disposed of by a common order.

4. The learned Counsel for the petitioners submitted that both the matters are covered by judgments of this Court, in. Principal Secretary to Government Vs. Dr.N.Anantha Lakshmi [Unreported Judgment in WP No.5345 of 2010 (DB) of High Court of Andhra Pradesh dated 28. 09.2010] Dr.M.Vasurchan Reddy and others Vs. State of Telangana 2018 (3) ALT 232 (DB).

5. The Learned Government Pleader for Services-IV vehemently opposed the contention of the petitioners and stated that the judgments in Principal Secretary to Government Vs. Dr.N.Anantha Lakshmi (supra Unreported Judgment in WP No.5345 of 2010 (DB) of High Court of Andhra Pradesh dated 28. 09.2010) and M.Vasurchana Reddy and others Vs. State of Telangana (supra 2018 (3) ALT 232 (DB)) not apply to the instant case matters and requested time for filing counters.

6. These two matters are being adjourned from time to time for filing counters since 16.08.2017. Recently the matters were adjourned on 18.10.2022, 23.11.2022 and 07.12.2022. As on 03.01.2023 also no counter has been filed by the respondents and the learned Government Pleader for respondents seeking further time for filing counter and the same was rejected.

7. As per Rule-12 (i) (a) of Writ Proceeding Rules, 1977, every respondent in every writ petition intending to enter appearance and oppose any Writ Petition on which notice is served by the High Court, shall enter appearance and file a Counter Affidavit in opposition as soon as may be and in any event within 120 days from the date of service of notice in the Writ Petition or the Service of Rule nisi on the said respondent. In view of the same, the right of filing counter forfeited.

8. The learned Counsel appearing for the petitioners submits that the petitioners completed M.B.B.S course in 1997 and 1999 respectively. The petitioner in W.P.No.24053 of 2018 was working as Doctor in ESI Dispensary, Karwan, Hyderabad and the petitioner in W.P.No.24067 of 2018 was working as Doctor at E.S.I Hospital at Ramachandrapuram of Medak District. While working as doctors both the petitioners appeared for the Entrance Examination for Post-Graduation Degree (P.G) Courses conducted by the 4th respondent and they both have got seats under Service Quota and accordingly the respondents relived the petitioners from their respective hospitals on 12.08.2014 and 01.07.2015 respectively to prosecute P.G. Courses. While it being so, the petitioners made representations to the concerned authorities on 24.01.2015, 08.01.2016 and 05.05.2016 for grant of deputation with pay and allowances, but the respondents did not respond. Thereafter the petitioners approached this Court and filed Writ

Petition No.41280 of 2016 and this Court disposed of the said writ petition on 15.03.2017 directing the respondents to consider the representations of the petitioners. Thereafter, the respondents passed the impugned order in Proc.No.2772/OP&IMS/A2/2015 dated 23.10.2017 rejecting the claim of the petitioners for payment of pay and allowances with all benefits for prosecuting Post-Graduation Course and treated the period of Study as Extraordinary Leave (EOL).

9. The Learned Counsel for the petitioners submitted that both the petitioners got seats in Post-Graduation Course and accordingly the respondents relived them to prosecute the P.G Course. In view of the same both the petitioners are entitled for pay and allowances as Fundamental Rule 2 (14) (a) of A.P.Service Rule, 1966.

10. The learned Counsel for the petitioners further submits that the impugned order passed by the respondents is without any base and more particularly the impugned order are passed on the ground that as on the date of existing rules i.e. as on 23.10.2017, which is nothing but gross violation of the Articles 14, 16 and 21 of the Constitution of India for the reason that there is a provision as on date the petitioners were permitted on deputation for three years for prosecuting the P.G Degree as in-service candidates and moreover there is no provision in restricting the candidates who completed the P.G Diploma before joining of the service to do P.G Degree in different subjects. Moreover, the Government has categorically clarified on 20.3.2009 in letter No.21752/E1/2008 with respect to interpretation of the G.Os and circulars wherein it is clarified that the G.O.Ms.No.279 of 2001 was superseded/amended through G.O.Ms.No.719 of 2003 and there is no contradiction in so far as the eligibility for the deputation and therefore the impugned order passed by the 2nd respondent is perverse and is liable to be set aside.

11. The learned Counsel for the petitioners further submits that the candidates who are deputed by the competent authority for higher studies shall be treated as 'on duty' and would be entitled for full salary.

12. The learned Counsel for the petitioners submits in view of law lay down in the above judgments the impugned order is liable to be set aside and requested to allow both the writ petitions.

13. After hearing considered view that into account of the Bench in Principal both sides, this Court of the the respondents without taking orders passed by the Division Secretary to Government Vs. Dr.N.Anantha Lakshmi (supra Unreported Judgment in WP No.5345 of 2010 (DB) of High Court of Andhra Pradesh dated 28. 09.2010) passed impugned orders declaring that the petitioners are not entitled for pay and allowances for prosecuting Post-Graduate Course and they are entitled for Extraordinary Leave for study for deputation.

14. The Division Bench of this Court in the Principal Secretary to Government Vs. Dr.N.Anantha Laxmi(supra Unreported Judgment in WP No.5345 of 2010 (DB) of

High Court of Andhra Pradesh dated 28. 09.2010), at the operative portion of the order, categorically held that:

".....We hold that all such in-service candidate who are deputed by the competent authority for higher studies and for undergoing training in India and abroad, shall be treated as 'on duty' and would be entitled to full salary which normally they get and the question of payment of stipend and even where stipend is paid deduction thereof from the salary does not arise".

15. Moreover, recently this Court in Dr.M.Vasurchana Reddy and others Vs. State of Telangana (supra 2018 (3) ALT 232 (DB)) and batch, at para No.7 of conclusion Para No.XI, held as follows:

" The second limb of Rule 5 (v) of the 2017 Rules, as amended by G.O.Ms.No.21 dated 30.03.2018 to the extent it relates to candidates, who did their post-graduate diploma course before joining government services, is struck down as irrational and ultra-virus Article 14 of Constitution of India. Consequently, the Government Doctors who have completed their post-graduate diploma courses before they joined government service, shall be entitled for deputing for a period of three years in terms of Rule 5(1) and (2) while undergoing post-Graduate medical course".

16. In the instant case also both the petitioners got seats in Post-Graduation Course and accordingly the respondents relived them to prosecute the P.G Courses. In view of the same, the judgments relied on by the learned Counsel for the petitioners apply to the instant case.

17. In view of the same, the impugned order passed by the respondents is liable to be set aside and accordingly set aside, directing the respondents to pay the pay and allowances including all benefits to the petitioners from 13.08.2014 to 12.08.2017 and 01.07.2015 to 30.06.2018 respectively within eight (8) weeks from the date of receipt of copy of order of this court.

18. Accordingly, with the above direction, these two writ petitioners are allowed. There shall be no order as to costs.

19. Miscellaneous Petitions pending, if any, shall stand closed.