
(2019) 09 DEL CK 0529

In the Delhi High Court

Case No : Civil Writ Petition No. 10419 Of 2019

Employees State Insurance Corporation

APPELLANT

Vs

Jyoti

RESPONDENT

Date of Decision : 25-09-2019

Acts Referred:

Central Civil Services (Leave) Rules, 1972 — Rule 53(4)

Citation : (2019) 09 DEL CK 0529

Hon'ble Judges : G.S.Sistani, J;Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : Nisha Hans, V.K. Singh, Kishore Kumar Patel

Final Decision : Dismissed

Judgement

G.S. Sistani, J

CM. APPL 43018/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 10419/2019

3. The petitioner is aggrieved by an order dated 13.12.2018 passed by the Central Administrative Tribunal (the Tribunal) in OA no.2878/2018 which allowed the prayer of the respondent herein for sanction of study leave which was sought vide a representation dated 18.06.2018 for pursuing M.Sc. Nursing Regular Course for a period of two years.

4. Notice. Learned counsel for the respondent accepts notice.

5. With the consent of the parties, the writ petition is set down for final hearing and disposal at the stage of admission itself.

6. Some necessary facts which are required to be noticed for disposal of this writ

petition are that the respondent joined the services of ESIC Model Hospital, Noida as a Staff Nurse on 10.06.2011. During the course of her employment, the respondent sought permission from the petitioner herein on 05.05.2018 for appearing in the M.Sc. Nursing Entrance Examination which was held on 14.06.2018. Admittedly, she did not receive any response from the petitioner. In order to not miss the opportunity, she appeared in the Entrance Test. She qualified for the same on 15.06.2018 and was selected for pursuing the M.Sc. course. Again, on 18.06.2018, the respondent submitted another representation informing the petitioner about her selection and also requested for issuance of a No Objection Certificate (NOC) for pursuing the course from 01.08.2018 to 31.07.2020. She also informed the petitioner that the last date for completing the admission process was 30.06.2018. Admittedly, yet again no response was received from the petitioner.

7. Fearing that she may miss the opportunity, she completed the formalities and deposited the admission fee on 03.07.2018. The respondent again filed an application on 26.06.2018 seeking NOC which was also forwarded to the Director, Directorate (Medical) Noida, ESIC Model Hospital, Noida, who in turn forwarded the application to the Regional Director, Regional Office, Employees' State Insurance Corporation, New Delhi. The stand of the respondent before the Tribunal was that she fulfilled all the eligibility criteria under the Guidelines and Rules to pursue study leave, however, the petitioner did not grant the NOC or permission to appear in the examination.

8. The Tribunal has taken all the grounds into consideration and allowed the OA filed by the respondent, which has led to the filing of the present writ petition.

9. The learned counsel for the petitioner has reiterated the submissions made before the Tribunal. It is contended that the petitioner found that it has become a common practice amongst the Medical/Nursing Officers to misuse the facility and pursue a Post-Graduation Course in an easy field to secure the tag of Post-Graduate. It has been contended that the Post-Graduate qualification, i.e., M.Sc. Nursing is not beneficial to the organization and there are no functional requirements of a degree in M.Sc. (Nursing) for the nursing staff. It has thus, been contended before this Court that the action on the part of the respondent in appearing in the Entrance Examination and thereafter undergoing the course is against the Rules.

10. During the course of hearing, reference has been made to the Guidelines dated 15.03.2011. The said guidelines are being reproduced below:

"HEADQUARTERS OFFICE

EMPLOYEES' STATE INSURANCE CORPORATION PANCHDEEP BHAWAN, CIG ROAD, NEW DELHI

No, A-12/H/I/10/Md-VI Dated 15/03/2011 To,

The Dir (Med) Delhi/Noida,

All SSMCs/SMCs/M.Ss of ESIC Hospitals,

Sub: Grant of Study leave-guidelines regarding

Sir,

It has come to the notice of Hqrs. Office that some cases of study leave of Nursing staff for pursuing further studies, being received in this office, are forwarded without proper scrutiny and with incomplete information which results in back references and avoidable delay in disposal of the case. In order to avoid such delay the following guidelines are being issued for strict compliance:-

Guidelines/policy as under:-

1. The course of study consulting of higher studies or specialized training should have a direct and close connection with the sphere of his/her duty and it should be beneficial for beneficiaries and the organization. It is to be certified by the leave recommending authority.
2. The applicant should have satisfactorily completed period of probation and has rendered not less than five years regular continuous service including the period of probation. The applicant is not due to reach the age of superannuation from the service within three years from the date on which he/she is expected to return to duty after expiry of the leave.
3. The applicant will execute a Bond as laid down in Rules 53(4) of Central Civil Services (Leave) Rules, 1972.
4. For undergoing Nursing Course preference may be given to the Govt. Nursing College for M.Sc. Nursing Course. The college should be recognized by the nursing Council of India/State Nursing Council of India.

Sd/-

(U S. MALHOTRA) (M.A.)

JOINT DIRECTOR (HQ.)"

11. Learned counsel for the respondent submits that there is no infirmity in the order passed by the Tribunal. He further submits that the respondent has taken due care to follow the Rules and Guidelines and approached the petitioner herein to seek permission; however, the same was not considered.

12. We have heard learned counsel for the parties. On careful examination of the foregoing Guidelines, we find that clause 4 of the Guidelines itself shows that, even as per the petitioner's guidelines, for undergoing a nursing course, preference would be given to Government Nursing College for M.Sc. (Nursing). In our view, if M.Sc. (Nursing) was not closely or otherwise connected to the nursing course, clause 4 of the Guidelines would not contain such a stipulation. Besides, we find that the respondent has followed the due procedure and made several representations, through proper channel, and there is no explanation on

the part of the petitioner as to why the permission was neither sanctioned nor rejected. Moreover, we find that the respondent has satisfactorily completed her period of probation and has rendered more than 05 years of continuous service. The respondent has also not reached the age of superannuation; and further during the course of hearing, learned counsel for the respondent has submitted that if not already executed, the respondent shall execute a bond as laid down in Rules 53(4) of Central Civil Services (Leave) Rules, 1972.

13. Learned counsel for the petitioner has placed on record a decision in the case of Anita Malik v. A.I.I.M.S. and Anr., reported at 129(2006) DLT 136 rendered by a learned Single Judge of this Court to support its stand. We find however that this judgment pertains to a matter where the petitioner therein was to convert the class of leave granted, namely extraordinary leave without pay into study leave with full pay and allowances. Accordingly, this judgment, in our view, cannot come to the aid and rescue of the petitioner.

14. We find no infirmity or irregularity which would require interference by this Court sitting in judicial review. We find no merit in the writ petition. The same is accordingly dismissed.

CM.APPL 43017/2019(stay)

15. The application stands dismissed in view of the order passed in the writ petition.