

(1974) 08 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petition No. 751 of 1969

Govindkant Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 21-08-1974

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1974) RLW 450 : (1974) WLN 622

Hon'ble Judges : Kan Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kan Singh, J.—This is a writ petition under Article 226 of the Constitution by one Shri Govind Kant Sharma, a Lecturer in the College of Nursing, Jaipur, asking an appropriate writ, direction or order. H prays : (I) that the orders of the State Government dated 11.4.67 and 3.6.69 refusing to treat the petitioner on duty and on deputation when he was away at Chandigarh for training be quashed, (2) the State Government be further directed to confer the benefit of Rule 7(8)(b)(i) and Rule 25 of the Rajasthan Service Rules on the petitioner, and (3) the Government be directed to determine the number of vacancies of Sister Tutors year by year and then to accord further promotion to the petitioner.

2. The petitioner came to be appointed as a Compounder on 7.6.53. He was promoted as Sister Tutor in the Medical Department on 23-5-60. The petitioner made an application for being permitted for advance training in Nursing (Education and Administration) in 1962. He; avers that this application was granted by the Ministry of Health, Government of India, Delhi by their order dated 30-6-62. The petitioner makes grievance of the fact that although he was selected for this training, he was not permitted to join the course while others were allowed to join the course and some of them were those who were not selected. On 9.6.65, the Director of Medical and Health Services (hereinafter to be referred as "D.M.H.S") recommended to the State Government to allow the

petitioner the Fellowship of World Health Organisation for receiving advance course of B.Sc.; in Nursing (Post Basic Degree Course). However, the Government did not act on this recommendation. In the year 1966 the petitioner made an application through proper channel for obtaining a copy of the prospectus and application form from the College of Nursing, Post Graduate Institute, Chandigarh and he had sent a copy of this application in advance to the Institute. The application was, however, returned to the petitioner by D.M. & H.S. with the endorsement that no such applications were invited by the Directorate and further there was no provision for the males to be absorbed gainfully after the completion of the course, as the posts in the College of Nursing were meant to be filled in by females and there were already so many sisters and sister tutors in the Department who were senior to the petitioner. The petitioner was told that he might apply as and when such applications were invited. The petitioner asserts that in the year 1966 the D.M. & H.S. issued a circular inviting applications for Inter alia Scholarship for the taking of advance course B.Sc. (Nursing) Post Basic Degree course outside India. The petitioner submits that he had made an application for this purpose, but at the same time he brought it to the notice of the D.M. & H.S. that the same course was available in India at Chandigarh. This he had done, because, according to him, it was mentioned in the circular that if this course is available in India then the studies should be undertaken in India itself. On 18.4.66, the D.M. & H.S. informed the petitioner that his application for training abroad had been recommended to the Government. In reply to the D.M. & H.S.'s letter the petitioner wrote him to say that it would be better if the petitioner is allowed to take the B.Sc. in Nursing (Post Basic Training Course) at the College of Nursing, Post Graduate Institute, Chandigarh. He added that on the completion of the course the petitioner's services could gainfully be utilised by the Department. He further pointed out that persons junior to him had been afforded the same facilities. Simultaneously the petitioner made an application through proper channel with an advance copy to the Institute for being granted admission to the Institute. On 16-5-66 the Institute desired the Medical Superintendent M.G. Hospital, Jodhpur to give a clearance certificate for the petitioner as without such a certificate the petitioner would not be allowed a seat in the College for the aforesaid course. On receipt of this communication the Principal of the Medical College and Controller of Associated Group of Hospitals at Jodhpur moved the D.M. & H.S. for issuing the clearance certificate for the petitioner. The petitioner then appeared before the D.M. & H.S. and explained his case to him. The D.M. & H. Section then gave a clearance certificate to the petitioner. The petitioner takes the stand that this action of the D.M. & H.S. was confirmed by the Government on 5-7-66 (vide Ex.6). Having obtained the clearance certificate the petitioner joined the course at Chandigarh in July, 1966 and successfully completed in on 11-6-68. While the petitioner was studying at Chandigarh, the D.M. & H.S. took the question of granting study leave to the petitioner and after some correspondence between the D.M. & H.S. and the Accountant General the petitioner was granted study leave. Side by side the petitioner moved the Government for treating him on

deputation and on duty while he was studying at Chandigarh vide his application Ex.10 The D.M.&H S. recommended the petitioner's case for being treated on deputation and on duty for the period of his course at Chandigarh. The recommendation of the D.M. & H S. was however, not accepted by the Government who refused to treat the petitioner on deputation but treated him on leave during the period of his study. The petitioner repeated his request, but without any success. The petitioner contends that in refusing to treat him on deputation the Govt. had meted out a discriminatory treatment to him in as much as in a similar case of one Shri Ram Swaroop, about which I will say further in the course of discussion, they had given him the benefit of deputation while he was studying a similar course in Trivendrum in 1964. Besides the case of Ram Swaroop the petitioner avers that several other persons namely, one Shri Ram Singh Sharma, Auxiliary Health Worker, who had undertaken the studies for M.B.B.S. Course on his own expenses, and One Shri Ram Avtar Mehta who took the Sister Tutor's course in 1967 were treated on deputation and duty. Thus, according to the petitioner, the Government action was discriminatory and thus violative of Article 14 of the Constitution.

3. The writ petition has been opposed by the State. It is denied that the Government action was violative of Article 14 of the Constitution or that Ram Swaroop's case was similar to that of the petitioner. The State took the same line regarding the other examples pointed out by the petitioner. It was submitted that the petitioner had applied directly to the Institute and then applied to the Government for study leave. Besides this his application for training was not in response to any circular issued by the Government inviting such applications and then the petitioner's services could not have been utilised with advantage, as there was no paucity of Sister Tutors by the time the petitioner had taken his course. It was further submitted that the rules vested a discretion in the Government and the discretion has to be exercised in the light of the circumstances obtaining, Since it was not alleged that the Government's action was mala fide, it was urged, the Court should not interfere in a purely administrative matter like the present one. Apart from this it was submitted that even if there could be some similarity between the case of the petitioner and that of Shri Ram Swaroop there would yet be no conscious discrimination as it is not shown that the so-called differential treatment to the petitioner was deliberately accorded.

4. Now, so far as the prayer of the petitioner for his claim for promotion on the ground of seniority is concerned, the contention was not pressed, because the petitioner was subsequently granted the relief. The only point that falls for consideration is whether the Government action in refusing the benefit of deputation was hit by Article 14 of the Constitution being discriminatory. I may read the relevant rules.

7(8) DUTY:

(a) Duty includes -

(i) Service as a probationer or apprentice; provided that such service is followed by confirmation.

(ii) Joining time.

(iii) In respect of a Government servant returning from leave the day of taking over charge of the same post from which he proceeds on leave.

(b) Government may issue orders declaring that in the following circumstances, or in circumstances similar thereto, a Government servant may be treated as on duty.

(i) During a course of instruction or training in India.

"Rule 109. The following rules relate to study leave only They are not intended to meet the case of Government servants deputed to other countries at the instance of Government, either for the performance of special duties imposed on them or for the investigation of specific problems connected with their technical duties. Such cases will be dealt with on their merits under the provisions of Rule 51 "

Rule 110. Study leave will be admissible to a permanent Government servant to pursue a course of study which is necessary in public interest for the working of the department in which he is employed

Rule 111. Study leave will be granted only if the sanctioning authority is of the opinion that leave should be granted in the public interests to pursue a special course of study or investigation of a scientific or technical nature. It will not be admissible to a Government servant who has completed 20 years of service.

5. Now, the above rubs show that the Government have the discretion to issue orders under the stated circumstances for the Government servant on study course to be treated as on duty. In that event while receiving the course of training in India the Government servant will be entitled to get full salary during the period. On the other hand, if study leave is granted to him according to Rules 109 to 111, he will be getting his leave salary, that is, the earned leave and for the remaining period if any, the servant would be mated en extraordinary leave, that is, he would not be getting the salary. As pointed out by their Lordships of the Supreme Court in *The State of West Bengal Vs. Anwar Ali Sarkar*, the expressions "discriminatory" and "hostile" are found to be used American Judges often simultaneously and almost as synonymous expressions in connect on with discussions on the equal protection clause. If a legislation is discriminatory and discriminates one person or class of the persons against others similarly situated and denies to the former the privileges that are enjoyed by the latter, it cannot but be regarded as hostile in the sense that it affects injuriously the interest? of other persons. While judging the vires of legislation the Court is not concerned with the motives of the legislation. Further for challenging the law a suitor is not required to prove that in making the law the legislature was actuated by a hostile or inimical intention against a particular person or class It is the effect of the legislation that has to be examined, but the question of intention would become

material where an officer of the State charged with the execution of an act is accused of discriminatory conduct and he would have a good defence if he is able to establish his bonafides.

6. In a later case reported as Ramnath Verma Vs. State of Rajasthan, their Lordships pointed out in para-6 of the judgment that discrimination envisaged under Article 14 is conscious discrimination and a discrimination arising out of oversight is no discrimination at all. In that case their Lordships were examining "the challenge against the administrative action regarding taking certain permits. In that case it appeared that by oversight certain permit was not taken. In my view, where an administrative action is challenged on the ground that it is discriminatory and hence violative of Article 14 of the Constitution the petitioner must show : (1) that there the officer was stirred by mala fides, (2) that there was conscious discrimination. When there will be mala fides it would be a case of conscious discrimination, as well. Even if there are no mala fides; but the petitioner is able to show that a certain similar case was before the authorities and being aware of it, a discriminatory treatment was yet meted out to the petitioner then in that event also the action could be treated as discriminatory and thus violative of Article 14 of the Constitution. I may read the impugned order Ex 14, which discloses the considerations weighing with the Government in not giving the benefit of Rule 7(8) of the Rajasthan Service Rule to the petitioner; earlier order does not disclose any reasons:

Copy of letter No. F. 5 (29) MPH/64/Gr. II dated 3.6.69 from the Asstt. Secretary to the Govt. Medical & Public Health Deptt. Rajasthan, Jaipur to the D.M. & H.S. Raj. Jaipur.

Sub: Deputation of Shri Govind Kant Sharma, Sister Tutor to under take the post graduate B.Sc. Nursing course at Chandigarh

Ref:- Your letter No. E(26)/554 etc. 26.3.69

Sir,

I am directed to say that the case of Shri Govind Kant Sharma for treating him on deputation was again examined and rejected due to the reasons that Shri Govind Kant Sharma had applied directly to the institution and then applied to the Government for grant of study leave. Beside this his application for training was not in response to any Circular issued by the Government inviting such application and had any such circular been issued it is likely that Son Sharma might not have been selected, It is also clear that at that time there was no place where the services of such trained personnel could have been utilised by the Diptt. In view of this position the matter may be dropped finally now. Shri Sharma may also be informed accordingly.

7. Learned Counsel for the petitioner has been at pains in showing that what has been mentioned in this order was not correct and further there was no distinction between the petitioner's case and that of Shri Ram Swaroop, respondent No. 3. I

may, therefore, at this point narrate the facts regarding respondent No. 3 Shri Ram Swaroop.

8. Shri Ram Swaroop made his application for being permitted to under take the Sister Tutor course being held at Vellore in the year 1959. The petitioner's grievance was that while Ram Swaroop was allowed to join the course, the petitioner was not allowed to join a similar course in Delhi till 1969. In the 1962 Ram Swaroop was selected like the petitioner for being sent for advance training in Nursing under the Colombo Plan along with two others. Thereafter Ram Swaroop proceeded to under take the B. Sc. (Nursing Course) in Trivendrum in 1964 without being permitted by the Government to do so, Later on, however, according to the petitioner, the Government allowed him to take up the studies at his own expense. Sometime later Ram Swaroop moved the State Government for treating him on deputation and on duty during the period of his course at Trivendrum and this request of Ram Swaroop was granted sometime in the year 1965. By a supplementary affidavit filed on 18.8.74 the petitioner brought in some further facts about Shri Kam Swaroop. The first one is Shri Ram Svaroop's application date 19.7.64. Shri Ram Swaroop had therein prayed for being sent on deputation, but ultimately he prayed that he may be granted provisional study leave or any other leave whichever was admissible at the earliest pending any decision on the case so that he may be able to make use of the opportunity afforded by his hard woo selection, as he put it. This application, according to the petitioner, was rejected. On 30.7.64, Shri Ram Swaroop made another application wherein he prayed that he would be applying for study leave for attending the course, if the Government finally decided not to depute him for the course. The Principal, R.N.T. Medical College and Controller of the Associated Group of Hospitals, Udaipur, by his order dated 31 7 64 permitted Shri Ram Swaroop to proceed on leave to attend the BSc Nursing course at Trivendrum from the afternoon of 31.7.64. He added that his regular leave would be sanctioned after verification of the title etc. On 27.10 64 Ram Swaroop made another application reiterating his case for grant of deputation He added a further prayer by way of an alternative that if his case for deputation be not accepted, then he may be degraded to the post of Compounder Grade I or II and posted at Bhilwara or Sahapura so that he may be able to eke out his existence with his meagre salary while at the same time serving the local community there Thereafter came the Government order dated 31.5.65 for treating Shri Ram Swaroop on deputation for the period of his training at Trivendrum.

9. Learned Additional Government Advocate submitted an affidavit on 19.8.74 wherein it was stated that certain parsons were appointed on part time basis in the Nursing College at Jaipur though they were not fully qualified as there was dearth of trained Nursing personnel About the case of Shri Ram Singh it was stated in the affidavit that he was an Auxiliary Health Worker and was selected for the WBBS course and the benefit of deputation was allowed to him to encourage people in the lower cadres. As regards the case of Shri Ram Avtar Mehta, who was sent oh deputation for the Sister Tutor course at Delhi, it was

stated that this was done because the Government of India provided central assistance for opening Auxiliary Nurse Midwife Centres under Family Planning Programme with dent percent assistance and it was for this reason that the necessity for trained Sister Tutors was felt and accordingly Shri Ran Avtar Mehta was sent on deputation for his training. As regards the paucity of the trained staff the petitioner had said that the paucity continued till the petitioner went on training to Chandigarh and the Government were net right in faying teat to the time the petitioner went on leave or till sometime later when his case was dealt with the paucity had ceased. As regards" the averment that the petitioners application for training was not in response to any circular issued by the Government inviting such application, leraned Counsel for the petitioner relied on his averments in paras-5 and 6 of the writ petition and the Government's reply thereto. He has stated in these paragraphs that a circular came to be issued by the D.M & H.S. in the year 1968 inviting applications for Inter alia Scholarship for undertaking Advance Course in BSc, (Nursing) Post Basic Degree Course outside India. The Government in their reply have admitted these paragraphs. Therefore, leraned Counsel maintains that the application of the petitioner was in response" to the circular aforesaid inviting applications. To clear the confusion the learned Additional Government Advocate was asked to place the circular before me, but unfortunately he was not able to do (to. Any way, if the pleadings are strictly construed then it only means that the Government invited applications for Inter alia Scholarship for undertaking Advance Course in B. Sc., (Nursing) Post Basic Degree Course outside India, but on account of what was further mentioned in the application she petitioner applied for training at Chandigarh. It has, therefore, to be accepted that the petitioner is right in saying that he applied for training at Chittorgarh because of something said in the circular. But, the third reason given by the Government is that there was no place where the services of such trained personnel could have been utilised by the Department. While leraned Counsel for the petitioner contended that paucity of staff was there right through, the Government controverted this stand Paucity or there being no paucity will be ultimately a matter of opinion, because this question cannot be determined with niceties Say if there are 50 posts and 20 posts Out of them are manned by untrained persons then one way say that there is paucity of trained staff, whereas another may hold a different opinion, because only 30 out of 50 will be trained. This is a matter primarily for the administrative authority to deal with. The Court while disposing of the writ petition is not heating any appeal against the administrative " decision Some latitude will necessarily have to be left to the administrative authorities to deal "with the matter relating to paucity of staff and the requirements of the Department; more so when holding a different opinion may involve! the question of financial liability. There is no doubt that by treating a person who goes for studies to be on duty the State undertakes a financial burden. Then one thing more it remarkable that there was almost a difference of two years in the two candidates going for training whereas Shri Ram Swaroop went for training in 1964, the petitioner went for training in 1966 and conditions may not remain Static for a period of two years. Therefore,

for this lesson also I am not inclined to interfere with a purely administrative matter like the present one. As I have already observed, if it is shown that the administrative authority was stirred by malafides or there was conscious discrimination then even the administrative action can be struck down but in a border line case, like the present one, I am not induced to interfere.

10. In the result, therefore, I hereby dismiss the writ petition, but leave the parties to bear their own costs.