
(1983) 10 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 489 of 1983

Habib Ullah Malik

APPELLANT

Vs

State and Ors.

RESPONDENT

Date of Decision : 24-10-1983

Acts Referred:

Constitution of India, 1950 — Article 128, 14

Citation : (1983) JKLR 443 : (1984) KashLJ 1 : (1983) SriLJ 320 : (1983) SriLJ 321

Hon'ble Judges : V.Khalid, J

Bench : Single Bench

Judgement

Mr. A. K. Malik

1. The petitioner was appointed as a Lecturer in the dentistry in the Government Medical College, Srinagar on 8111976. He entered in

Government service as a Dental Surgeon on 591968. He was offered a foreign assignment, whereupon he approached the Government of Jammu

and Kashmir seeking permission to proceed abroad. He was allowed to go as per Ex. P2 order dated 4101980. The original permission was for a

period of two years. He was offered appointment by the Government of Saudia. Arabia for a further period of three years. He accepted the offer

and requested the Government to extend his leave by period of three years. This leave application was recommended by his head of department.

The application and the recommendation were forwarded to the Government who rejected the application by Ex. PS order. The petitioner has

approached this court with a request that Ex: P5 order be quashed since it is not a speaking order and has been passed in violation of the

principles of natural justice and hostile discrimination was shown, against him by

the Government.

2. The prayers in the writ petition are sought to be substantiated with the plea that while the Government allowed other doctors to continue in

service enjoying foreign assignment, the petitioner has been treated differently, thus violating the clear mandate contained in Art. 14 of the

Constitution of India. The petitioner has given the names of several doctors who have been favourably treated by the Government. The

Government invoked the provisions of Art. 128 J&K CSR without granting the petitioner an opportunity of making an effective representation and

of being heard. The refusal to extend the leave despite the recommendation by the head of the Department is a malafide and arbitrary exercise of

power.

3. For the purpose of the disposal of this writ petition, take it for granted that the averments contained in the petition are correct. There may be

doctors in the service of the State who are on foreign assignment and who have been granted extensions. The question for consideration is whether

the petitioner has any right to enforce before this court for his prayer to quash order Ex. P3. It is well known that every state in India more so,

perhaps, Jammu and Kashmir State has to spend a sizeable amount to prepare a medical graduate. The State expects graduates coming from

professional colleges to serve it and does not want to encourage brain drain. The graduates who enter state service can not claim a right to serve

abroad while being in service of the State. The State as the employer can grant leave and permit its employees to be abroad for period or periods

taking into consideration the interests of the State Service. No employee can dictate to the State that he or she should be allowed to remain on the

tools of the State service and enjoy the service abroad. Those who seek fresh fields and pastures new to augment their material resources, are

at liberty to do so but not at the costs of interests of the State, The Government does not stand in the way of its employees going abroad for more

lucrative jobs. All that the Government has done in this case is to ask the petitioner to remain in the State and has declined the extension prayed

for. The predicament of the State is easily understandable. There will be qualified persons willing to accept jobs in the State service and

government willing to entertain such persons. The Government can not promise

security of tenure for such persons for the reason that the employees like the petitioner who are entitled to a lien over the State service may at their sweet will come back to displace new recruits. Persons like the petitioner are at liberty to give up the State service and to go abroad for their lucrative assignments. To allow persons like the petitioner to dictate to the State that they should be granted extension in all eventualities will be to deny to the State, who is the employer, a right to deal with its employees. The employees cannot have the cake and eat it too.

4. Now I will consider the case based on Art. 14 of the constitution of India: I agree for the purpose of this writ petition that there are doctors abroad but on the rolls of the State service. The Government cannot be expected by a stroke of pen to terminate the services of all such persons.

The Government will have to consider each case on its merits at the appropriate time when the period of extension expires. The permission granted to such persons cannot be characterised as a favourable treatment accorded to them and the denial of extension to the petitioner as hostile discrimination against him. The petitioner cannot, in my view, successfully canvass any violation of Art 14 of the Constitution of India on the facts of this Case.

5. The petition has to fail and is hereby dismissed. I would like to observe that the petitioner will be at liberty to move the authorities to pray for time to enable him either to wind up his service in the State or to wind up the foreign assignment and, I am sure, the authorities would sympathetically consider when such a request is made by the petitioner.