
(1997) 08 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 1599 of 1995

Harbans Lal Sharma Dr.

APPELLANT

Vs

State of Jammu and Kashmir and Others

RESPONDENT

Date of Decision : 27-08-1997

Acts Referred:

Civil Services Regulations, 1956 — Article 44F
Constitution of India, 1950 — Article 14, 226

Citation : (1998) KashLJ 372 : (1998) SriLJ 206

Hon'ble Judges : R.C.Gandhi, J

Bench : Single Bench

Advocate : S.K.Anand, M.K.Bhardwaj, Advocates appearing for the Parties

Judgement

1. The petitioner by means of this petition is seeking issuance of a writ of certiorari for quashing Order No. MDG86/81H22 dated 15.9.1995 with

a further writ of Mandamus commanding the respondents to sanction deputation of the petitioner for undergoing D.P.H. from 08.07.1987 to

03.06.1988 and for M.H.A. 12.07.1990 to 18.06.1992 (SIC) alongwith interest at the rate of 24% per annum.

2. The petitioner has averred in the petition that the petitioner, while working as Assistant Surgeon in the Health Department came to be selected

for undergoing Course of Diploma in Public Health in All India Institute of Hygiene and Public Health, Calcutta out of a panel of four doctors

recommended for selection by Respondent No,3, Director, Health Services, Jammu. After the selection of the petitioner for undergoing D.P.H. in

Public Health, the petitioner was relieved on 8.7.1987 and he joined the Institute on 13.07.1987 and remained under study in the Institute till

3.6.1988. The Director, Health Services, Respondent No.3 requested the

Respondent No.2 under his letter dated 10.8. 1987 that the petitioner has been selected for undergoing the D.P.H. Course and necessary Government orders for the deputation of the petitioner to All India Institute of Hygiene and Public Health, Calcutta may be issued and conveyed to him. It is also mentioned in the letter that the Department of Health needs the services of the doctor at District level as District Health Officer. Again a letter to this effect was written by the Respondent No.3 to the Respondent No.2 for sanction of deputation but there was no response from the deputation sanctioning authority.

3. After undergoing the course of D.P.H., the petitioner joined the department. He was again selected for undergoing post graduate studies in

Hospital Administration by the All India Institute of Medical Sciences, New Delhi. The petitioner was relieved by the Director, Health Services

again wrote to the respondent No.2 for sanction of deputation in favour of the petitioner for the period of undergoing Diploma Course as

recommended earlier and post graduate Course in Hospital Administration from 12.07.1990 to 18.06.1992. The Respondent No.3 was asked

vide letter No. MDG86/811122 dated 31.5.1995 by the respondent No. 2 to intimate the date of first appointment of the petitioner for sanction of

deputation. The said information was supplied by the Respondent No.2 under his communication dated 3.7.1995. The Respondent No.2 under his

letter dated 15.9.1995 addressed to the Respondent No.3 conveyed that the period spent by the petitioner for undergoing Diploma and

postgraduate course be treated as leave whatever kind due to him excluding study leave as already conveyed vide Department letter dated

31.1.1989.

4. The respondents were put on notice on 27.12.1995 granting an opportunity to file objections opposing the relief prayed for in the petition.

Despite grant of several opportunities, the respondents did not file the objections and the petition was ultimately admitted to hearing by an order

dated 12.3.1997 providing them an opportunity to the respondents to file counter affidavits. The respondents after the admission of the petition

opted not to file the counter affidavits and the petition has been directed to be listed for hearing.

5. I have heard the learned counsel for the parties and perused the record. The

learned counsel for the petitioner has submitted that number of doctors have been sent to undergo the training course of D.P.H. and PostGraduate Hospital Administration * and the Government has sanctioned the deputation in their favour, but the petitioner has been singled out arbitrarily without assigning any reason as to why and what prompted and for what reasons the respondents singling out the petitioner directed the period undergoing the course be treated as leave whatever kind due. His contention is that the respondents have dealt with the petitioner by double standard and capriciously. In support of his contention, he has annexed Government Order No. 468TRGS of 1991 dated 6.6.1991, 173GD of 1984 dated 25.1.1984, 197TRGS of 1994 dated 8.6.1994, 89 TRGS of 1995 dated 20.2.1995, 699TRGS. of 1993 dated 18.10.1993 and 132GRTRGS of 1990 dated 11.5.1990, whereby the deputations have been sanctioned in favour of Dr. Romesh Kumar Gupta, Assistant Surgeon, Dr. Pawan Kumar Nargotra, Dr. Anjila Shah, Dr. Inder Prakash Gupta, Dr. Iffat Hasan and Dr. Sanjay Hak respectively. In some of the cases, Expost facto sanction has also been accorded for sanction of deputation

6. His further contention is that the Government must have a policy to send the doctors on deputation and the doctors aspiring for higher education or otherwise being sent by the Government for acquiring higher studies cannot be placed at the mercy of the Government for sanction of deputation at the whims and caprices of the Government. Unless the Government have a definite codified norms for sanction of deputation, there is even possibility of arbitrarily dealing with the sanction of deputation by the Government. The case of the petitioner is a simple exercise of such arbitrary power. No reasons have spelled out by the Government as to why the case of the petitioner has been singled out and what weighed with the Government to sanction deputation in other referred cases.

7. Learned counsel for the respondents, Mr. S.K.Anand, has submitted that the doctors sent to undergo such courses has been dealt with for purposes of sanction of deputation under the Civil Service Regulations and it is for the Government to grant deputation in genuine cases. He could not make out, and rightly so, when the respondents have opted not to file counter, as to why and what weighed with the Government for not sanctioning the deputation in favour of the petitioner. He also could not point out

what are the norms adopted by the Government for sanction and refusal to sanction of the deputation except the provisions contained in the Civil Service Regulations.

8. It is settled proposition of law as laid down in number of judgments delivered by this Court that if the respondents have not filed the counter, the

averments of the writ petition are required to be treated as true. The averments of this petition are not controverted by filing the counter affidavits,

the court has no option but to treat the averments of the allegations against the respondents as true. The learned counsel for the petitioner in

support of his contention has referred to 1995 K.L.J. 42, which is based upon the judgment of this Court delivered in Writ petition No. 1508 of

1988 in Dr. Ranjit Singh's case. Those two judgments squarely apply to the facts of the present case being the controversy involved as identical. In

Dr. Inder Parkash case also, the Government opted not to file counter affidavit and the court observed that in absence of the reply affidavit, the

averments are treated to be true. It is further observed that there is no option before the court, but to presume that the Government has similarly

situated doctors and the petitioner in that petition (Dr Inder Parkash) has been discriminated. Once such presumption is drawn, the petitioner

cannot be deprived of similar treatment, as that would definitely offend Article 14 of the Constitution of India. The case of the petitioner is identical

on facts and with respect to the relief sought for in the writ petition. The petitioner has been discriminated and not treated similar to those doctors,

who have been sent on deputation and no reasons have been assigned for extending the benefit of deputation to the petitioner. The petitioner has

been discriminated and the petition needs to be allowed.

9. For the foregoing reasons, the petition is allowed. The respondents are directed by a writ of mandamus to treat the period of deputation for

undergoing D.P.H. and Post Graduation Courses of the petitioner in terms of Article 44F of the J and K Civil Services Regulations and the benefit

of deputation accruing thereunder be extended to the petitioner within a period of three months. No order as to costs. It also disposes of LA.