

(2016) 08 P&H CK 0194
In the Punjab And Haryana At Chandigarh
Case No : CWP No.18459 of 2007 (O&M)

Harminder Kaur

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 22-08-2016

Acts Referred:

Punjab Study Leave Rules, 1963 — Rule 3, Rule 5

Citation : (2017) 2 RSJ 131 : (2017) 1 SCT 407

Hon'ble Judges : Daya Chaudhary, J.

Bench : Single Bench

Advocate : Anshul Gupta, AAG, Punjab, for the Respondents/State; Anoop Verma and Chanan Singh, Advocates, for the Appellant

Final Decision : Disposed Off

Judgement

Daya Chaudhary, J. - The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to sanction the study leave to the petitioners as per Rule 3 of the Study Leave Rules, 1963 (hereinafter called as "the Rules 1963") as granted to the similarly situated employees. The petitioners have also claimed that they are entitled for the benefit in terms of order dated 29.05.2003 passed by this Court in CWP No.2121 of 1995 as well as order dated 24.09.2007 passed by this Court in CWP No.4239 of 2006 along with all consequential benefits.

2. Briefly, the facts of the case as made out in the present writ petition are that all the petitioners were selected as A.N.Ms. and subsequently, designated as Multipurpose Health Workers (Female) on the basis of recommendation made by the Departmental Selection Committee constituted by the State Government. On completion of five years of regular service, all the petitioners were selected and deputed to undergo training for "A" Grade Nursing Course by the Department of Health and Family Welfare, Punjab. As per Rules 3 and 5 of the Rules 1963 as given in Appendix 20 of the Punjab Civil Services Rules Volume-I, Part-II, it has

been provided that the study leave for the maximum period of 24 months can be granted to a Government employee during the entire service to enable him/her to undergo in or out of India, special course of study consisting of higher studies, specialised training in a professional and technical subject having a direct and close connection with the sphere of his or her duties. As per aforesaid Rules, the employee is entitled for 12 months at anyone time and 24 months (inclusive of study leave granted under any other rules) in or during the entire service. The petitioners were deputed for "A" Grade Nursing Course. They were allowed earned leave/half pay leave/extraordinary leave for the period of their training. A condition was put while granting leave by considering the same as extraordinary leave without pay/half pay leave/leave of the kind due for the period of training.

3. The grievance of the petitioners in the present writ petition is that they are entitled to study leave for the period of "A" Grade Nursing Course undergone by them, as granted to other similarly situated counterparts, by the State Government vide order dated 21.03.2002 subject to approval of the Finance Department and thereafter, clarification issued vide order dated 19.09.2002.

4. Learned counsel for the petitioners submits that the leave of the petitioners have been treated as extraordinary leave or leave without pay. The petitioners have made representation but no action was taken. Learned counsel further submits that the case of the petitioners is squarely covered by the decision passed by this Court in CWP No.2121 of 1995 as in that case also, the claim was declined and subsequently, this Court vide order dated 29.05.2003 held that the petitioners in that case were entitled for grant of study leave for that period. It was also held that the petitioners would be entitled to the financial benefits for that period. Similar relief was granted in a Division Bench judgment of this Court in CWP No.4239 of 2006 titled as "Kuldeep Kaur and others v. State of Punjab and others". Learned counsel also submits that the SLP filed against said judgment was also dismissed.

5. Learned State counsel has not disputed the fact regarding dismissal of SLP as well as allowing of the claim in above said two petitions. Learned State counsel opposes the submissions made by learned counsel for the petitioners by contending that a specific condition was mentioned while granting leave that the period would be considered as leave of the kind due. It has also been argued by learned State counsel that the petitioners had undergone the course, which was in their interest.

6. Heard arguments of learned counsel for the petitioners as well as learned State counsel.

7. Admittedly, the petitioners in pursuance of regular selection process joined Health and Family Welfare Department as A.N.Ms. Subsequently, they were designated as Multipurpose Health Workers (Female). On completion of five years of regular service, they were selected and deputed to undergo training for "A" Grade Nursing Course by the Department. It is not disputed that the controversy

in hand is squarely covered by the decision passed by this Court in CWP No.2121 of 1995, which was allowed on 29.05.2003. The relevant portion of the said judgment is reproduced as under:-

" After hearing the learned counsel for the parties, I am of the considered view that the relief sought in the instant petition has been granted by the order Annexure A-1 dated 21.03.2002 with C.M. No.6325 of 2003. The learned Additional Advocate General has not disputed the application of this order to the instant case on the ground of retrospectivity. Therefore, the earlier order dated 22.03.1993 is deemed to be over-ruled and the petitioner has become entitled to grant of study leave course, they would be entitled to the financial benefit for that period. Let the needful be done within a period of two months from today."

Thereafter, some of the employees filed CWP No.19350 of 2012 titled as Swaranjit Kaur and others v. State of Punjab and another, which was allowed in terms of Division Bench judgment of this Court in Kuldeep Kaur's case (supra). It is also not disputed that the SLP filed by the State against aforesaid judgment was also dismissed.

8. In view of the facts and law position as mentioned above, the present writ petition is allowed in terms of judgment passed in Kuldeep Kaur's case (supra). The respondents are directed to consider the case of the petitioners in view of the decision passed by this Court in CWP No.2121 of 1995 and CWP No.4239 of 2006. The necessary exercise be done within a period of two months from the date of receipt of certified copy of this order. The respondents are also directed to grant the necessary benefits to the petitioners within a period of one month thereafter.

9. In case, the petitioners are still aggrieved in any manner, they are at liberty to avail the appropriate remedy.