
(2015) 01 KAR CK 0296

In the Karnataka High Court

Case No : Writ Petition No. 44178/2014 (EDN-RES), C/W W.P. No. 42038/2014, W.P. No. 42678/2014, W.P. No. 42679/2014, W.P. No. 42680/2014, W.P. No. 43643/2014, W.P. No. 43644/2014, W.P. No. 43645/2014, W.P. No. 44177/2014, W.P. No. 44179/2014 and W.P. No. 44180/2014

Kavitha A.R.

APPELLANT

Vs

Employees State Insurance Corporation

RESPONDENT

Date of Decision : 14-01-2015

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14

Citation : (2015) 01 KAR CK 0296

Hon'ble Judges : B.S. Patil, J.

Bench : Single Bench

Advocate : Akkamahadevi Hiremath, for the Appellant; M.P. Geetha Devi and N. Khetty, Advocates for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil, J.—In all these writ petitions, common questions arise for consideration as the grievance made by the petitioners are similar. Hence, they are clubbed, heard together and are disposed of by this common order.

2. Petitioners have joined the services under the Employees State Insurance Corporation-1st respondent herein (for short "ESI Corporation") and are working at ESI Corporation Model Hospital, Rajajinagar, Bengaluru-2nd respondent herein (for short, "ESI Hospital"). They qualify the description of "in-service" candidate as defined under the Karnataka Conduct of Entrance Test for Selection and Admission to Post-Graduate Medical and Dental Degree and Diploma Courses Rules, 2006 (for short, "PGET Rules"), as amended from time to time. Initially, only persons belonging to Department of Health and Family Welfare, were considered for the purpose of the quota meant for "in-service" candidates for admission to Post-Graduate Degree and Diploma Courses. But, by subsequent amendments made to the PGET Rules, persons working under the Boards and

Corporations have also been included and doctors employed in the ESI Corporation are also treated as in-service candidates as per the submission made by the State before this Court in Writ Petition Nos. 11146-11211/2012 for the year 2013-14.

3. The minimum service to be put in by an in-service candidate to be eligible to take postgraduate examination through entrance test was three years. However, the State Government by notification dated 23.11.2013 enhanced the minimum service to five years. This notification was questioned in W.P. No. 845-854/2014 and connected cases. This Court has granted an interim order of stay of further proceedings pursuant to the said notification. Therefore, petitioners claim that as they have completed three years of service and their probation has been declared, they were eligible to participate in the entrance test for the year 2014-15.

4. The Karnataka Examination Authority notified conduct of post-graduate entrance test for selection of candidates to the post-graduate courses. Petitioners applied through their employer-ESI Hospital. Petitioners appeared for the entrance test. All the petitioners were qualified in the entrance test. They were called upon to submit their option for admission to the post and the place where they intended to join and pursue the respective course. Accordingly, they submitted their options. The Karnataka Examination Authority issued admission orders to pursue post-graduate course in different colleges. For instance, in W.P. No. 42038/2014, Dr. V. Veena who had opted to join M.S. General Surgery at Mysuru Medical College has been issued admission order to pursue her studies at the said College as is clear from Annexure-D-admission order. The list of allotted candidates issued by the Examinations Authority, wherein names of petitioners appear and the Colleges to which they have been allotted has been indicated, is produced at Annexure-E in the writ petition filed by Dr. V. Veena. Petitioners claim to have paid requisite fees in the month of May 2014 to the institution so as to join the course. Receipt for having paid the fees by Dr. V. Veena is produced at Annexure-F.

5. Petitioners, upon their admission to the post-graduate course gave representation to the ESI Hospital, requesting to relieve them from service to enable them to join the course and pursue the studies by enclosing an application seeking leave in terms of the relevant rules providing for grant of study leave. The ESI Hospital did not consider the application. However, by communication dated 07.08.2014, the Deputy Director (MED) of the 1st respondent-ESI Corporation, New Delhi, informed the Medical Superintendent of the ESI Hospital that the request made by the petitioners for sanctioning study leave had not been acceded to by the competent authority. Accordingly, petitioners were informed of the same. A copy of the said communication is produced at Annexure-L to the writ petition filed by Dr. V. Veena. In the circumstances, aggrieved by the action of the ESI Corporation and the ESI Hospital, petitioners have approached this Court challenging the rejection of their

request and seeking a direction to relieve them so as to enable the petitioners to join and prosecute their studies at the respective institutions in terms of the selection and allotment of seats made by the Karnataka Examinations Authority as per the PGET Rules.

6. Mr. P.S. Rajagopal, learned Senior Counsel has addressed arguments for some of the petitioners and learned Counsel Smt. Akkamahadevi Hiremath and other learned Counsel have appeared and argued for the others.

7. Learned Counsel Smt. Geethadevi has appeared for respondents 1 and 2. She has taken me through the statement of objections filed and the relevant rules viz., the Central Civil Services Leave Rules (for short, "Rules"), particularly Chapter VI of the said Rules which pertains to study leave.

8. Various judgments have been cited by the learned Counsel appearing for both parties.

9. At the outset, objection has been taken regarding the maintainability of the writ petitions contending inter alia that as the matter pertains to rejection of the request for study leave by the employees of the ESI Corporation, petitioners were required to approach the Central Administrative Tribunal (for short, "CAT") as per Section 14 of the Administrative Tribunals Act, 1985. Notification dated 02.05.1986 issued by Government of India bringing the ESI Corporation under the purview of the CAT is relied upon in this regard. Order dated 13.11.2014 passed by the Division Bench in W.A. No. 2566/2014 and connected cases is relied upon to contend that issue relating to maintainability of the writ petition is kept open to be urged along with merits. It is in this background, the matter is heard both on the question of maintainability and on merits.

10. The facts as emerge from the pleadings and the documents placed on record indicate that all the petitioners got qualified in the entrance test conducted by the authority. They have been allotted seats in different post-graduate specialty to different institutions. They have paid the fees. It is very important to note here that applications are filed by the petitioners through their employer seeking to appear for the entrance test. The controlling officer who heads the ESI Hospital has recommended and forwarded the applications, whereupon the petitioners were permitted to take the examination and were selected for admission to various specialties based on their merit obtained in the entrance test.

11. The main contention urged by the Counsel for the respondents apart from the plea of maintainability is that, large number of employees and their family members have to be extended medical help, therefore, the hospital needs number of hands, hence study leave cannot be granted to the petitioners on their asking and that they have no such vested right to seek leave as of right. Referring to Rule 50 of the Rules, it is urged by the learned Counsel for the respondents that it is the discretion of the authorities either to grant or to refuse study leave keeping in mind the exigency of public services. It is contended that

as per Rule 50 study leave shall not be granted unless it is certified by the authority competent to grant leave that the proposed course of study was of definite advantage from the point of view of public interest. It is also urged that the competent authority to grant leave is the Director General of Health Services.

12. Learned Counsel further points out that, but for the interim order obtained by the petitioners, wherein the respondent-Director General, ESI Headquarters, was directed to issue authorization in favour of Medical Superintendent, ESI Hospital, to forward the applications of the petitioners and other similarly situated doctors, the respondents would not have forwarded the applications of the petitioners. It is also urged that petitioners have themselves given an undertaking that their selection was subject to the final orders of the Court in W.P. No. 845-865/2014 and connected cases and that mere forwarding of their applications would not confer upon them any automatic right to avail study leave. It is further contended by the learned Counsel for the respondents that none of the doctors have completed five years as on the date of application and were therefore not eligible to take up the examinations.

13. It is also urged that the respondents are required to sanction study leave based on the seniority of the concerned candidates and the utility in availing their services as specialists. Counsel urges that although petitioners were indeed recommended for pursuing the Post-graduate course while forwarding their application by the controlling officer, the said recommendation made by the controlling officer was of no consequence because the authority to grant study leave is the Director General and not the controlling officer.

14. In reply to the contention urged by the petitioners that the communication under challenge rejecting the request for study leave was bereft of any reasons, the Counsel has contended that the said communication is only an internal communication addressed by the head office to the ESI Hospital and the records contain materials in support of the conclusion reached. It is further urged in the statement of objections that totally 23 candidates have submitted the request for study leave, out of them, 11 candidates have been granted study leave based on their seniority, utility and importance of the course as per the requirement of the Corporation and the rest of the candidates could not be sanctioned leave as the Corporation found no requirements in terms of the provisions of Rule 50 of the Rules.

15. In the light of the various contentions urged by the respondents, the question that falls for consideration before this Court is the scope and effect of the PGET Rules vis-a-vis the eligibility of the petitioners to pursue their studies in the various Post-graduate courses to which they have been admitted and the justification of the respondents in refusing to grant study leave. In addition, maintainability of the writ petition is also required to be considered as it is contended by the respondent that petitioners ought to have approached the Central Administrative Tribunal.

16. Answer to these questions is not dependent merely on the understanding of the conditions for grant of study leave as contained in Rule 50 of the Rules, but upon the understanding of the PGET Rules as well. It has to be borne in mind that ESI Hospital has been for the first time included and is extended the benefit of in-service quota for the doctors employed therein with effect from the year 2013 to enable them to avail the benefit of pursuing post-graduate courses in different specialties. The PGET Rules are framed pursuant to provisions of Section 14 of the Capitation Fee Act. These Rules provide for entrance test and eligibility to appear for the entrance test. They define the term "in-service candidate"; provide for the procedure for selection of in-service candidate for admission to post-graduate medical and dental courses. In so far as in-service candidates are concerned, as per Rule 3(2) of the PGET Rules, those who have completed five years of service and successfully completed the probationary period as on the last date of receipt of applications for the entrance test can apply through proper channel.

17. As regards eligibility to appear for the entrance test, Rule 4 of the PGET Rules lays down certain criteria. Rule 10 deals with the procedure for selection of in-service candidates. It reads as under:

10. Procedure for selection of in-service candidates for admission to Post-graduate Medical and Dental courses.-The procedure for selection of in-service candidates for admission to Post-graduate Degree and Diploma in Medical and Dental courses is as follows.-

(1) No in-service candidate shall be eligible for admission under these rules.-

(a) unless he has put in not less than three years of regular service;

(b) unless he has satisfactorily completed the prescribed period of probation.

(2) No in-service candidate shall be eligible for admission to Post-graduate degree and Diploma courses in any subject other than the specialty in which he is working;

(3) An in service candidate who is already holding a Post-graduate degree in any specialty shall not be eligible for admission to any other Postgraduate degree or Diploma;

(4) An in-service candidate who is already holding Post-graduate Diploma in any specialty, through Government deputation, shall be eligible for admission to Post-graduate degree course in the same specialty and shall not be eligible for any other Post-graduate degree or Diploma courses;

(5) An in-service candidate who is studying in any Post-graduate degree or Diploma course shall not be eligible for admission under these rules;

(6) No candidate who is above forty-eight years of age as on the last date fixed for receipt of application shall be eligible for admission.

18. Among the candidates who have taken the entrance test, the most meritorious would be selected. In fact the very purpose of holding the entrance test is to assess the merit and to select the meritorious.

19. The provisions regarding grant of study leave are contained in Chapter VI of the Central Civil Services Rules. Rule 50 provides for conditions for grant of study leave; maximum amount of study, leave to be granted is dealt with as per Rule 51; applications to be submitted for study leave is dealt within Rule 52 and sanction of study leave is provided in Rule 53. The other provisions which deal with leave salary during study leave and other matters are not of much relevance at present.

20. A perusal of Rule 50(1) would show that study leave is granted with due regard to the exigencies of public service to enable the Government servant to pursue, in or out of India, a special course of study consisting of higher studies having a direct and close connection with the sphere of his duty. Further, as per Rule 50(2), study leave may also be granted in respect of a course of training or study tour which may not require the Government servant to undergo a regular academic or semi-academic course and in certain other circumstances. Rule 50(3) places an embargo for grant of study leave unless it is certified by the authority competent to grant leave stating that the proposed course of study or training shall be of definite advantage from the point of view of public interest and unless it is sought for prosecution of studies in subjects other than academic or literary subject. Rule 50(5) also provides that study leave can be granted to a Government servant who has completed the period of probation and who has rendered not less than 5 years regular continuous service including the period of probation under the Government; who is not due to reach the age of superannuation within three years from the date on which he is expected to return to duty after the expiry of the leave and who executes a bond undertaking to serve the Government for a period of 3 or 5 years as the case may be. Rule 50(6) lays down that study leave shall not be granted to a Government servant with such frequency as to remove him from contact with his regular work or to cause cadre difficulties owing to his absence on leave.

21. Based on the above provisions contained in Rule 50, it is contended by the Counsel for the respondents that even though petitioners were recommended to take entrance test while forwarding their applications, even though they have emerged meritorious and have been allotted admissions in different postgraduate specialties in several colleges, study leave can be refused if it is found that it was not in the exigencies of public service to permit them to undergo the special course of study and it is not certified by the competent authority stating that the course was not of definite advantage from the point of view of public/interest. It is also urged that a medical officer could be granted study leave for prosecuting post-graduate study if only the Director General of Health Services certifies to the effect that such study shall be valuable in increasing the efficiency of such medical officer in the performance of his duties as provided under proviso (2) to

Rule 50(3) and that in the present case, no such certification has been made by the Director General.

22. At the outset, it is clear that there is inconsistency in the purport and import of the PGET Rules and the strict application of Rule 50 of the Rules pertaining to study leave. In such circumstance, both the rules have to be harmoniously construed. In fact in a similar circumstance, in the case of Dr C.M. Hanumantharaju and Others Vs. Dr Siddappa and Others, , a Division Bench of this Court dealing with the effect of PGET Rules vis-a-vis the Karnataka Civil Services Rules, 2007, particularly Rule 61 relating to deputation of a "Government servant for higher studies, has held in paragraphs 55 and 56 as under:

55. The controversy in these cases is with regard to the eligibility of certain in-service candidates for Post-graduate courses, be it degree or Diploma courses. Of course, the study of the Post-graduate course is by way of deputation insofar as the in-service candidates are concerned. However, the conundrum is, as to whether in the matter of deputation for these courses, the Rules of Deputation made under the KCSR would apply or the admission to the said courses would be made on the basis of the PGET Rules, 2006. The Rules of Deputation are made under the KCSR and have to be read as part and parcel of the Karnataka Civil Services Act, but the PGET Rules, 2006 are made under the provisions of the Capitation Fee Act and it specifically deals with admission for the Post-graduate Courses. Therefore, the moot point for our consideration is, as to whether the Deputation Rules made under the KCSR as well as the PGET Rules, 2006 made under the Capitation Fee Act have to be harmoniously read for the purpose of admission of in-service candidates to Post-graduate Medical and Dental Courses or it is either of the said Rules which would have an over-riding effect on the other and therefore, compliance with only one set of Rules is required for admission to Post-graduation courses.

56. We have extracted and analysed the respective Rules having regard to the object for which they have been enacted as well as the conditions prescribed therein. If for the sake of argument it is assumed that it is Rule 61 read with Appendix-IIA of the KCSR (Deputation Rules), which are the only Rules applicable for deputation of an in-service candidate for Postgraduate studies, then the question would be as to whether the eligibility criteria prescribed under the PGET Rules, 2006 would have to be given a go-by. It is noted that there are more number of criteria prescribed under the PGET Rules, 2006 at the stage of application for an Entrance Test, eligibility to appear for an Entrance Test and for admission to a Post-graduate course that is, at three stages. On the other hand, the Deputation Rule framed under Rule 61 of the KCSR is a general rule concerning deputation of all Government servants for higher studies or other training based on seniority, except for the reasons to be recorded in writing. Under the said Rules of Deputation, a Government servant is not required to apply for an Entrance Test. Under the said Rules, the selection of a candidate for

higher studies or specialized training is made strictly on the basis of seniority and the number of Government servants to be deputed at any point of time for higher studies or specialized training has to be at a minimum, not exceeding 5% of the sanctioned permanent strength of the concerned cadre. Whereas under the PGET Rules, 2006 specific conditions are prescribed for application to an Entrance Test, eligibility to take the Entrance Test and for admission to a Postgraduate course. The varied conditions which have been listed supra are conspicuous by their absence in the Deputation Rules for higher studies under the KCSR. In other words, even if a Government servant fulfills the conditions prescribed under Rule 61 read with Appendix-IIA of the Deputation Rules, he or she should not be eligible for admission to a Post-graduate course unless and until he/she fulfills the eligibility criteria ever for the application for the Entrance Test, eligibility to take Entrance Test as well as the admission for the Post-graduate Courses. One cannot lose sight of the fact that we are concerned with deputation for Post-graduate course in Medical/Dental Course and not any other course. Therefore, the eligibility criteria prescribed under the PGET Rules, 2006 necessarily have to be fulfilled by an in-service candidate irrespective of whether such a candidate has fulfilled the conditions prescribed under Rule 61 of the KCSR read with Appendix-IIA.

23. In the context of Rule 61 of the KCSR pertaining to deputation for higher studies and the PGET Rules framed in the year 2006 and while considering them together particularly because the PGET Rules had imposed several conditions to be fulfilled by in-service candidates before they could be admitted for post-graduate courses which conditions were not found in Rule 61 of the KCSR, the Division Bench in paragraph 62 has held as under:

62.....The object and purpose of the PGET Rules, 2006 is to select the most meritorious candidates for Post-graduate Courses even within the in-service quota, on the basis of the conditions prescribed under the Rules at the stage of application for the Entrance Test, at the stage of appearance for the Entrance Test and finally at the stage of admission to the Postgraduate course. It is also noted that even if an in-service candidate fulfills the condition of Rule 61 of the KCSR, he would not be entitled to admission for a Post-graduate course until and unless he fulfills the conditions prescribed under the PGET Rules, 2006. The Deputation Rules on the other hand, do not deal with the necessity of taking an Entrance Test for being selected and admitted to a Post-graduate Medical or Dental Course. The PGET Rules, 2006 are thus "Special Rules" framed by the State Government in the matter of admission to Post-graduate Medical and Dental Courses both Degree and Diploma of pursuant to the decision of Supreme Court in Gopal D. Thirthani and regulation 9 of the PGME Regulations.....

24. In paragraph 63 of the judgment, the Division Bench has gone on to observe as under:

63..... The prescription of the eligibility criteria under the PGET Rules, 2006 would therefore, prevail over any other Rules of Deputation made as a condition

of service for higher studies. In the instant case, what we have discerned is the eligibility for admission to Post-graduate course and not a mere deputation for higher studies. The selection and admission for a Post-graduate course is circumscribed by certain terms and conditions prescribed under the PGET Rules 2006 which are common both with regard to in-service candidates as well as those candidates who are not in service. But as far as in-service candidates are concerned, certain additional prescriptions are made under the PGET Rules, 2006 and it has already been observed that these additional prescriptions are absent in the KCSR. Therefore, the PGET Rules, 2006 being Special Rules for admission to a Post-graduate course would obviously prevail over the Rule 61 of the KCSR, which is a general rule for deputation. Also an in-service candidate, merely on the basis of his seniority cannot be sent for deputation and admitted to a Post-graduate course, unless he qualifies under PGET 2006, Rules.....

25. In the instant case also, the provision made for grant of study leave do not provide for any selection and admission to the post-graduate courses on the basis of merit. The rules are totally silent regarding merit. Whereas, PGET Rules, 2006 which are enacted pursuant to the provisions of the Capitation Fee Act, provide for selection based on merit only. Section 12 of the Capitation Fee Act provides for overriding effect of the provisions of the Act notwithstanding anything inconsistent contained in any other law for the time being in force. The Rules providing for study leave under the Central Civil Services Rules were in force prior to the Capitation Fee Act. Therefore, as held by the Division Bench in paragraph 65 of the aforementioned judgment, while dealing with the deputation rules made under the KCSR, the provisions of the Capitation Fee Act would prevail over any other law in view of the non-obstante clause in Section 12.

26. The PGET Rules framed in the year 2006 providing for merit based selection in exercise of the powers under Capitation Fee Act, will therefore prevail over Rule 50 of the Rules and at any rate, both these rules have to be harmoniously construed. If so construed, it cannot be said that even after the concerned candidate recommended and permitted to apply to take the Entrance Test, emerges as most meritorious and gets selected, the said candidate could be denied benefit of study leave because on grounds of seniority or lack of it or that it was not in public interest or in the exigencies of public service to allow him to pursue the post-graduate course, etc. Whatever exercise the respondents were required to do in terms of Rule 50 of the Rules providing for study leave ought to have been done by the respondents while forwarding and recommending the names of the petitioners to enable them to take the Entrance Test. Once their names were recommended and petitioners were permitted to take the entrance test and consequent admission in the respective colleges, it would not be open for the respondents to take up the plea that there was no public interest involved or that the exigencies of public service would not enable the petitioners to pursue their studies in the higher course or that the Director General had not certified the course as beneficial and that it was only the controlling officer who had recommended the name of the applicant. The respondents cannot frustrate the

process of merit based selection by relying on the undertakings obtained from the candidates or by contending that because of the interim order granted by the Court the recommendations were made.

27. The next question to be considered is with regard to the maintainability of the writ petition before this Court. Judgments in *L. Chandra Kumar Vs. Union of India and others*, ; and *Rajeev Kumar and Another Vs. Hemraj Singh Chauhan and Others*, , are relied upon to contend that petitioners were required to approach the CAT. The main issue as addressed herein above in these cases is with regard to the benefit of admission to the post-graduate medical courses and the entitlement of the petitioners to pursue their studies in terms of the allotment of seats based on merits in the post-graduate courses by the Karnataka Examination Authority under the PGET Rules. Challenge to the action of the respondents in denying the study leave to such of the selected and meritorious candidates is consequential. Therefore, in the context of PGET Rules and the admission of the petitioners who are in-service candidates to postgraduate medical courses, it cannot be said that petitioners cannot maintain these writ petitions. The matter, does not in substance or in effect pertain to the service conditions of the Government servant. In fact, the discussion made above, clearly discloses how the matter does not merely deal with the service conditions, but has indeed got larger ramifications regarding the admission to post-graduate courses and the entitlement of the admitted candidates to pursue their studies coupled with the issue of harmonious construction of the rules and the primacy of PGET Rules providing for merit based admission to post-graduate Courses.

28. It is also relevant to notice here that respondents are entitled to examine public interest, exigencies of service and the utility for higher studies in any specialty in respect of particular candidates before forwarding the applications to the examination authority and before enabling the candidates to take up the entrance test. Once the applications are forwarded, particularly by recommending their eligibility and suitability, the respondent-Corporation cannot come up with a plea that as per the study rules, the name of the candidate concerned could not have been forwarded and that study leave cannot be granted. It has to be stated so because the process of admission to post-graduate courses is required to be done in a transparent, time bound manner particularly in view of the various pronouncements of the Apex Court, wherein strict adherence to time frame for closure of admissions, commencement of academic year have been emphasized in the interest of quality medical education. Hence, the contention urged by the respondents that even after the in-service candidates were allotted admissions and got admitted to different colleges, study leave could be denied by referring to Rule 50 of the Rules cannot be accepted. Hence, the petitioners are entitled to succeed.

29. In the result, these writ petitions are allowed. Impugned communications are quashed. Respondents 1 and 2 are directed to grant study leave to the

petitioners and to relieve them from their duties to pursue the Post-graduate courses in the respective colleges as per the admission granted to them by the Karnataka Examinations Authority. Having regard to the delay already occurred in the matter, respondents 1 and 2 are directed to comply with the directions immediately, at any rate, within a period of two weeks from the date of receipt of a copy of this order.