
(2014) 09 UK CK 0025

In the Uttarakhand High Court

Case No : Writ Petition (SB) No. 284 of 2014

Krishna Kant Pandey

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) LabIC 4417

Hon'ble Judges : K.M. Joseph, C.J.;V.K. Bist, J

Bench : Division Bench

Advocate : K.P. Upadhyaya, Advocate for the Appellant; P.C. Bisht, Standing Counsel, Advocate for the Respondent

Judgement

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K.M. Joseph, C.J.—In view of common questions raised and similarity of facts, we dispose of these writ petitions, three in number, by the following common judgment. We would refer to the facts as stated in Writ Petition (SB) No. 284 of 2014. In the year 2010, Uttarakhand Public Service Commission (hereinafter referred to as the "Commission") advertised 564 posts of Medical Officer (Ayurvedic). Petitioners were interviewed by the Commission in 2011. In October, 2012, petitioners got admission to the Post Graduation course in Ayurveda. Petitioners were expected to furnish a bond, according to which, they could not leave the Post Graduation course before its completion without paying back the entire amount of stipend received by them according to the relevant pay-band. Subsequently, in 2012, the Commission declared the results and the petitioners were included in the merit list. In 2013, the Government issued appointment notifications requiring the appointees, which included the petitioners, to report in the Directorate in connection with their joining. Petitioners, after reporting in the Directorate, made representation for grant of leave for higher studies. According to them, posting orders were issued. They made requests for grant of leave without pay to complete the course. 15.01.2014 is the date, which is referred to,

to indicate that, in pursuance of the direction of the Government, the Director submitted information regarding the candidates, who were pursuing higher studies and appointed as Medical Officers. Petitioners made further representations. The Director wrote to the petitioners to join latest by 31st March, 2014, failing which, their appointments would be cancelled. Petitioners made further representation repeating their earlier request. There was no favorable decision and, hence, petitioners approached this Court under Article 226 of the Constitution of India seeking the prayer as follows:

"(a) issue a writ, order or direction in the nature of mandamus directing the respondent State to grant study leave to the petitioner for completing his PG course after first permitting him to join as a Medical Officer (Ayurvedic) at the place of his posting."

2. We have heard the learned counsel appearing for the petitioners and the learned Standing Counsel for the State.

3. The learned counsel for the petitioners would submit that, only because the matter was delayed by the Commission and the petitioners secured admission to the Post Graduation course, petitioners thought it fit to join the Post Graduation course. They have executed the bonds. In terms thereof, petitioners are expected to continue with the course and, in case they discontinue the course, they run the risk of having to pay very large sums of money. On the other hand, they have secured appointments with the Government. It is the case of the petitioners that, if the petitioners are permitted to complete the course and, at the same time, keep the appointments; the public health system will be benefited, as they will have the benefit of a Post Graduate education behind them, which will better equip them to serve the common man. On the other hand, if the relief, which is sought by them, is not granted; the result will be that they will either have to lose their appointments or will have to end up paying large sums of money, which they have agreed to pay in terms of the bonds executed by them. The learned counsel for the petitioners would contend that there is no embargo against the grant of study leave to a probationer under the Rules. The learned counsel also drew our attention to the judgment of the Rajasthan High Court, wherein, it is pointed out that in similar circumstances, the Rajasthan High Court took the view that there is no prohibition and, therefore, the relief can be granted. The learned counsel for the petitioners would point out that this Court is having extra-ordinary jurisdiction and, to mete out justice to the parties in the peculiar set of facts, appropriate orders may be passed to protect the interest of the petitioners.

4. Per contra, the learned Standing Counsel would point out that the petitioners are not Government servants as of now. Though they have been issued orders of appointment, they have not cared to join the posts. It is submitted that, without joining, there is no question of considering the grant of leave. Furthermore, according to the learned Standing Counsel, the question has engaged the attention of the Cabinet, itself, which has taken a decision not to grant leave. No

doubt, the learned counsel for the petitioners would point out that the petitioners are not aware of such a decision of the Cabinet.

5. We may, now, take the prayer, which the petitioners are seeking. It is a writ of mandamus directing the State to grant study leave for completing the Post Graduation course after, first, permitting the petitioners to join as Medical Officers (Ayurvedic) at the place of their posting. A writ of mandamus is premised, undoubtedly, on the existence of a legal right with the petitioners to demand the thing, which the Court is persuaded to command the answering respondents to do. Further, there must be a public duty with the answering respondents to discharge, which they have failed to discharge despite a demand being made. Let us examine, whether the petitioners have a legal right and the respondents have a public duty of the nature, which is comprehended within the prayer?

6. The prayer, which we have already noted, is that the respondents be directed to grant leave to the petitioners for completing their Post Graduation course after, first, permitting them to join. Therefore, as things stand, petitioners have not joined. The question of leave is a matter to be decided by the competent authority. It is settled law that a mandamus will not be issued directing the authority to do a thing in a particular way, when there is a discretion. No doubt, the Apex Court has held in *Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another*, that there may be extra-ordinary cases, where an authority can be commanded to do a thing in a particular manner. But, in this case, we must notice that the claim of the petitioners, itself, would appear to be founded on the violation of the agreement with the Medical Colleges, which they have joined. It is, undoubted, that, under the bond, petitioners become liable to pay the amount, if they discontinue the studies. What this Court is asked to do in writ jurisdiction is to permit the petitioners, in essence, to deviate from the terms of the bond so as to permit them to join the Government service, which involves discontinuance of the course to that extent and, thereafter, to direct the Government to grant the leave. Grant of leave is a matter, which is within the province of the competent authority, which we have already mentioned, and is not a matter, which we can command the authority to grant.

7. Petitioners referred to Rules 84, 85 & 170 of the U.P. Fundamental Rules, which are applicable here also. The same are extracted hereunder:

"84. Leave may be granted to Government servants, on such terms as the Governor may by rule or order prescribe, to enable them to study scientific, technical or similar problems or to undergo special courses of instruction. Such leave is not debited against the leave account.

85. (a) Extraordinary leave may be granted in special circumstances (1) when no other leave is by rule admissible, or (2) when, other leave being admissible, the Government servant concerned applies in writing for the grant of extraordinary

leave. Such leave is not debited against the leave account. No leave salary is admissible during such leave.

(b) The authority which has the power to sanction leave may grant extraordinary leave as in clause (a) in combination with, or in continuation of, any leave that is admissible and may commute retrospectively periods of absence without leave into extraordinary leave.

170. Leave may be granted to a probationer if it is admissible under the leave rules which would be applicable to him if he held his post substantively otherwise than on probation."

8. It may be true that a perusal of Rule 170 countenances power with the authority to grant leave in respect of a probationer. Petitioners will become probationers only after the petitioners join. Here, the petitioners have, admittedly, not joined. We have already noticed the prayer, which the petitioners pressed for, which is that the petitioners may be permitted to join and, then, leave be granted to them. We are of the clear view that the mandamus, which the petitioners are seeking that the petitioners be granted leave, is not something, which we should grant to the petitioners, as leave is within the discretion of the authorities. Petitioners are medical practitioners. They have been selected by the Government for being appointed as such so that they may serve the people. If the petitioners had joined as Probationers, it is for the Government to decide whether leave be granted. In a manner of speaking, it is a case, where the petitioners want to have the best of both worlds. On the one hand, they want to continue the Post Graduation course and, on the other hand, they want to keep the Government job. As far as keeping the Government job is concerned, it may entail losing the right to continue the Post Graduation course. As of now, since the petitioners have not joined and they are not Probationers, even going by Rule 170, we would think that it may not be proper for this Court to issue a direction, which may, in essence, be illegal, as the question of considering the grant of leave would arise only if the petitioners become Probationers, which the petitioners have not yet become. In such circumstances, we are of the view that no relief can be granted to the petitioners. The writ petitions will stand dismissed.