
(2019) 03 J&K CK 0046

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 426 Of 2019, IA 01 Of 2019

Monika Sharma

APPELLANT

Vs

State Of Jammu & Kashmir And Other

RESPONDENT

Date of Decision : 11-03-2019

Acts Referred:

Citation : (2019) 03 J&K CK 0046

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Farhan Mirza, Raman Sharma, H.A. Siddiqui

Final Decision : Disposed Off

Judgement

1. The short grievance, as projected by the petitioner in this petition, is that after completing BAMS (Bachelor of Ayurvedic Medicine and Surgery) Course appeared in the entrance examination of All India Ayush Post Graduate Entrance Test (AIAPGET), 2017. The petitioner was declared successful and got selected for pursuing the P.G.Course and was allotted R.A Podar Medical (Ayu.) College, Worli, Mumbai. While the petitioner was undergoing the aforesaid P.G. Course, she came to be appointed as Medical Officer Aurvedic vide Government Order 189-HME of 2019 dated 20th February, 2019 and posted at Govt. Ayurvedic Dispensary Kampla, Rajouri.

2. The petitioner submits that since she is already undergoing P.G.Course at R.A.Podar Medical (Ayu.) College, Worli Mumbai, she may be permitted to undergo P.G.Course by treating her to be on inter-cadre deputation. She also claims benefits as are available to the regularly appointed employees on deputation to other service/cadre. The learned counsel for the petitioner has cited some examples to make good his point that the Government from time to time had been showing indulgence and permitting the candidates, like the petitioner, to complete their P.G. Courses by treating them on inter cadre deputation.

3. Having heard learned counsel for the petitioner and perused the record, I am of the view that the condition/clause (I) contained in the order of his appointment is just, fair and rational. No recruitment rule or statutory provision was brought to my notice, which would permit such arrangement to continue. In case the petitioner intends to continue with her P.G.Course at Mumbai, she may have either to forgo the appointment or apply to the respondents for study leave, if permissible. She however, cannot be permitted, on her own, to undergo P.G. Course at R.A. Podar Medical (Ayu.) College, Worli Mumbai while being in the service of respondent department. Such unauthorized absence from duty may entail loss of appointment and discharge of the petitioner from his appointment/engagement.

4. Learned counsel for the petitioner urges that permitting the petitioner to undergo P.G. Course would hone her skills in the medical profession and simultaneously would be in larger public interest. It is, thus, claimed that the interest of justice would demand that the petitioner is treated to be on deputation till she completes P.G. Course in R.A.Podar Medical (Ayu.) College, Worli, Mumbai.

5. I am not impressed by the submissions of the learned counsel for the petitioner. The moment, the petitioner accepts the appointment and joins his duties as Medical Officer, she becomes the government employee and, thus, she is bound by the rules and regulations governing the employees holding the civil posts under the State. To my notice, other than the study leave rules issued by the Government vide SRO 274 of 2013 dated 30th May, 2013, there is no other provision permitting a regular appointed employee to complete her Course of study which she might have started prior to the appointment. Neither of any such rules was brought to my notice by the learned counsel appearing for the petitioner. The contention of the learned counsel of the petitioner that she should be treated to be on deputation is also without substance and cannot be accepted. It is however, true that the respondents have taken a decision that in-service Medical Officers who were selected for PG Courses before 30.05.2013 would be treated as on deputation and thereafter all such cases were to be considered under Study Leave rules issued vide SRO 274 of 2013 dated 30.05.2013. It is also important to note that deputation under the civil service regulations from Government to non-Government organization, within or outside the State Government or the Central Government or the other Government is regulated by the Regulation 52-C.

6. Perusal of Regulation 52-C would make it abundantly clear that the deputation, in essence, is a transfer of an employee from the Government to the non-Government Organization. After deletion of Regulation 52-C, vide SRO 192 dated 28th May, 2007, the transfer on deputation from one department of the Government to another department is also not now permissible. Be that as it is, the deputation of a government employee to the Professional or Training Institute is not envisaged by the Civil Service Regulations or the Rules regulating

the recruitment and the condition of service of the Government employees.

7. In view of the aforesaid discussion, it is clear that prayer of the petitioner that she should be allowed to undergo and complete her Post-graduation from R.A.Podar Medical (Ayu.) College, Mumbai is not permissible under law and therefore, cannot be accepted. However, the petitioner, if eligible in terms of SRO 274 of 2013, is free to apply for study leave after joining her services. It is true that she may not be eligible to get the study leave till she completes his three years' mandatory service as required under aforesaid SRO, but the Government, in appropriate cases as also to mitigate individual hardship, may relax the aforesaid three years prescription. The minutes of meeting held in the office chamber of the Commissioner/ Secretary Health and Medical Education on 30th May, 2017 on the subject throws considerable light on the issue in hand. The copy of the minutes of the meeting were brought to the notice of this Court by Raman Sharma, learned Dy. AG during the course of the arguments.

8. The decision taken in the aforesaid meeting in paragraph (6) is relevant and is noticed hereunder:-

"...6. It was accordingly decided that the present position may be allowed to continue i.e. the in-service doctors who have completed three years of service/probationary period may be allowed to pursue PG Course as per the study leave rules notified vide SRO 274 of 2013 dated 30.05.2013. However, to facilitate the career progression of the in-service doctors who have not completed their three years of service/probationary period may also be allowed to pursue their PG Courses with the condition that the period spent by them on PG Courses shall be treated as leave whatever kind due or dies non as the case may be. Since the department has taken a principled stand that after 30.05.2013, the in-service doctors shall be allowed to pursue PG Courses as per the study rules notified vide SRO 274 of 2013, any deviation at this stage may invite unnecessary litigations and administrative difficulties."

9. In view of the foregoing discussion and analysis, this Court does not find any merit in this petition. The petitioner cannot be permitted to undergo her Post-graduation in R.A.Podar Medical (Ayu.) College, Mumbai, and simultaneously continue her employment as Medical Officer Ayurvedic in Govt. Ay. Dispensary, Kampla, Rajouri. If she intends to continue her employment as Medical Officer, she is under obligation to perform her duties on the post. She, however, is entitled to approach the respondents for grant of study leave in terms of SRO 274 of 2013. Should the petitioner adopt the aforesaid course and applies for study leave, the respondents would consider the same on the touchstone of the study leave rules promulgated vide SRO 274 of 2013 dated 30th May, 2013 and keeping in view the decision taken by the respondents in a meeting held under the Chairmanship of Commissioner/Secretary, Health and Medical Education dated 30th May, 2017 provided the same is intact and has not been reviewed, modified or withdrawn.

10. In the alternate, learned counsel for the petitioner submits that since the last date of joining is 12th March, 2019, as such, the petitioner who is pursuing her PG Course in Mumbai is unable to cause her joining, therefore, time for her joining be extended.

11. Keeping in view the difficulty expressed by the learned counsel for the petitioner in causing her joining within the prescribed period, time to cause joining by the petitioner as Medical Officer is extended by five days w.e.f 12 th March, 2019.

12. This petition accordingly is disposed of in terms aforementioned.