

(1982) 03 KL CK 0030
In the High Court Of Kerala
Case No : O.P. No. 56 of 1979

N. Krishnan Kutty

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision : 01-03-1982

Acts Referred:

Citation : (1982) KLJ 230

Hon'ble Judges : T. Kochu Thommen, J

Bench : Single Bench

Advocate : K. Sudhakaran, K.K. Babu and V.K. Raveendran, for the Appellant;
M.N. Sukumaran Nair, B. Raman Pillai and K.K. Dinesan, for the Respondent

Judgement

T. Kochu Thommen, J.—The only question which is urged before me is as regards the construction of Rule 12(7) (iii) of Part I of the Kerala Service Rules. The sub-rule reads:-

(7) Duty - Duty includes-

(i) Service as a probationer or apprentice, provided that such service is followed by confirmation.

(ii) Joining time.

(iii) A course of instruction or training which an officer undergoes especially ordered by Government to be treated as duty.

(emphassis supplied)

The contention of the petitioner is that clause (iii) would apply only when a person was ordered by the government to undergo the course, and not when he went on his own and the government later ordered, as in the case of the 3rd respondent, to treat his period of leave as duty.

The petitioner is admittedly junior to the 3rd respondent in the cadre of Tutor in Psychiatry. The petitioner completed his probation on 8-9-1973 and took leave to

study for M. D. Examination in Psychiatry. He obtained the degree in May 1976. The 3rd respondent took leave as from 1-7-1974 to study for M.D. in Psychiatry. She passed the M.D. Examination and rejoined duty on 30-6-1976. The vacancy in question for the post of Asst. Professor in Psychiatry arose on 30-8-1977. By Ext. P3 order dated 18-11-1978 the Government treated the period of leave granted to the 3rd respondent as duty in terms of Rule 12(7) (iii) for the limited purpose of probation. As a result of Ext. P3, the 3rd respondent was considered to have completed her probation well before the vacancy in question arose. The petitioner challenges Ext. P3 contending that the Government could not so treat the 3rd respondent's leave as duty for the purpose of counting it towards probation as such power is not vested in the Government in terms of Rule 12(7).

2. The question whether Rule 12(7) justifies Ext. P3 is dependent upon whether the construction of the provision would lead to the conclusion that the Government have the power to recognise as duty any period of instruction or training already undergone by an employee in the past.

3. The petitioner's counsel Shri Sudhakara Prasad contends that to attract Rule 12(7) (iii) a person should have been ordered by the Government to go on a course of instruction or training. Only in such cases can the period of absence be treated as duty. In the case of a person who went on his own will to undergo training, the Government, counsel says cannot by a subsequent order treat the period of leave as duty. Counsel refers to the decision of this court in *Shareef Rawther v. State of Kerala* (1977 KLT 814). That was a case where no order had been passed by the Government treating the leave as duty and this Court rejected the contention that the Government had an obligation to so order. This principle has no application here. The present is a case where the Government in the public interest decided that the period of leave for the purpose of obtaining M.D. degree in Psychiatry was necessary to be treated as duty, for there was a shortage of qualified hands in that field. It is a matter of the Government's discretion, on the basis of the availability of experts and the demands of the public interest, to decide whether or not persons are required to be trained in a particular field. It was believed by the Government that qualified hands in the field of Psychiatry were urgently needed. With reference to such need and the interest of the public, the period spent on leave by the 3rd respondent was treated as duty. The relevant clause is not very clearly worded. A literal interpretation would seem to suggest that the order of the Government has to be made before a person goes on leave, unless the clause is read widely enough to include subsequent orders treating past leave as duty. If the clause were read:

A course of instruction or training which an officer undergoes or has undergone and specially ordered by the Government.

(emphasis supplied)

there would be no difficulty. But that is not how it is worded. "Undergoes" is in the present tense and would, if read literally, suggest that the order of the

Government must be made prior to or at the time of granting a person leave to undergo the course and not subsequently. Such strict interpretation, as rightly pointed out of the Government Pleader, would defeat the beneficial object of the clause, which is to enable the Government to treat as duty time spent on studies which are beneficial to the Government. If a person went on studies, but did not return after the studies, as it often happens in these days of "brain-drive," or if a person went on waiting his time, and did not complete his studies, as it happens—alas!—not too infrequently, in any such eventuality, it would be open to the Government to deny a person's claim to treat his leave as duty. So the object is to enable the Government to make use of the time usefully and beneficially spent by a person to the mutual advantage of himself and the Government. Looking it at from the point of view of the benefits meant to be derived and the object sought to be achieved, and adopting such beneficial and purposeful interpretation, I am of the view that Rule 12(7) (in), insufficiently worded as it may on the face of it appear to be, ought to be read in the manner suggested above, viz., "....undergoes or has undergone and specially ordered...." This would mean that it is open to the Government to order either before or at the time a person is allowed to go on leave to undergo a course or subsequently in terms of that his leave as duty. This is what the Government have done. In the circumstances the challenge against Ext. P3 fails. The O.P. is dismissed. No costs.