

(2019) 02 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) 1804 Of 2003

Raj Kumar Chalotra @APPELLANT@Hash State Of Jammu & Kashmir And Others

Date of Decision : 07-02-2019

Acts Referred:

Jammu And Kashmir Civil Services (Leave) Rules, 1979 — Rule 73

Citation : (2019) 02 J&K CK 0001

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Anuj Dewan Raina, Vishal Bharti

Final Decision : Allowed

Judgement

Rajesh Bindal, J

1. The petitioner has approached this Court, impugning the Government Order No. 107-Works of 2003 dated 29th August, 2003, whereby period from 10th August, 2000 to 12th February, 2002 was treated as absence from service; as study leave (without pay and allowances).

2. Learned counsel for the petitioner submitted that the petitioner was appointed as Sectional Officer in Public Health Engineering Department on 22nd March, 1978. Later on the post of Sectional Officer was re-designated as Junior Engineer Grade-II on 29th October, 1987. The Government of India proposed a scheme for post-graduate specialization courses for inservice Engineers with graduate degrees. For that purpose, twelve academic institutions were recognized. The departments were requested to nominate suitable candidates to undergo the post-graduate course vide Communication dated 14th January, 2000. The petitioner being a graduate was nominated for the PG Course by the Chief Engineer of the department. The proposal clearly mentioned that the petitioner, who was the sponsored candidate to undergo the post-graduate course, will continue to draw his normal monthly salary and allowances as per the rules throughout the period of studies. His TA/DA, educational tour expenses etc. shall be reimbursed by the department. Vide Communication dated 30th March, 2000,

the State Government forwarded the name of the petitioner to the Central Government. The petitioner successfully completed the course. During the period of study as per the conditions laid down in the letter recommending his case, he was paid full salary and allowances, however, to his surprise, when he came back, impugned order was passed, treating his period of study as absence from duty, for which the petitioner was not held entitled to any pay and allowances.

3. Impugning the aforesaid Communication, learned counsel for the petitioner submitted that the petitioner never applied for any study leave. It was a scheme sponsored by the Central Government, where certain nominations were required. The name of the petitioner was nominated by the State Government and in the letter of his recommendation, it was specifically mentioned that he will be entitled to draw his full pay and allowances for the period of study. Even the fee of the course was paid by the Central Government.

4. Reliance by the State to deny the petitioner pay and allowances for this period, on Rule 73 of the Jammu and Kashmir Civil Services (Leave) Rules, 1979 (hereinafter referred to as 'the Rules') is totally misplaced, as the aforesaid Rule was substituted on 25th April, 2000, whereas permission to the petitioner was granted prior thereto.

5. It was further submitted that the department had requested the institute, where the petitioner was undergoing the post-graduate course that his monthly attendance be intimated so as to enable the department to calculate and pay his salary. He was relieved from his duty for undergoing the post-graduate course, hence, cannot be said to be absent from duty.

6. On the other hand, learned counsel for the respondents submitted that issue regarding appointment and re-designation of his post, is not in question in the present petition. However, he submitted that as per the condition laid down in the letter issued by the Government of India seeking nominations, a stipend of ₹ 2000/- per month was to be paid to the nominated employees, who were to undergo the course. The petitioner does not dispute the fact that he had received that amount. This amount was payable to the petitioner for a period of eighteen months, hence, he cannot be granted salary over and above the amount of stipend paid to the petitioner as per the conditions in the scheme. There is nothing wrong in the order passed by the authorities, denying him salary for the period he did not perform his duty.

7. Heard learned counsel for the parties and perused the paper book.

8. Vide Communication dated 14th January, 2000 from the Ministry of Urban Development Government of India, nominations were sought of the inservice candidates who were graduates, for undergoing a post-graduate course. The idea was to emphasize on advancements in Water and Waste Water Management Technologies. Twelve renowned academic institutions were recognized for conducting this course in Public Health Engineering/Environmental Engineering. The letter further suggested that a stipend of ₹ 2000/- per month will be paid to

the outstation candidates. The details accompanying the aforesaid letter provided the duration of the course, the stipend payable and the number of the seats. The aforesaid stipend was to be paid by the Government of India to the candidate through academic institute. Expenses towards tuition and examination fees were reimbursed to each candidate by the Government of India through the institute. All other fees were payable either by the candidate or the nominating department. In case, a candidate discontinues the course or fails to complete the same within the period prescribed, he was liable to refund the entire amount of stipend/tuition and examination fees etc.

9. Keeping in view the aforesaid scheme, the name of the petitioner was forwarded by the department concerned to the Government of India in the performa. In the recommendation made by the Chief Engineer, which was finally approved, it was clearly stated that the petitioner will continue to draw his salary and allowances during the period of his study. TA/DA, education tour expenses etc. will be reimbursed by the department. Relevant part thereof is extracted below:-

"Countersigned and sponsored Shri Raj Kumar Chalotra J.E. (C) to undergo the P.G. Course in the year 2000-2001 in any one of the institutions mentioned above. It is hereby certified that in case he/she joins the course he/she will continue to draw his/her normal monthly salary and allowances as per rules throughout the period of studies and his/her TA/DA, educational tour expenses etc. will be reimbursed by the department."

10. The aforesaid endorsement was signed by the Chief Engineer of the department concerned. After the name of the petitioner was recommended to the Government by the State vide letter dated 30th March, 2000, the petitioner was relieved for joining the course on 05th August, 2000, as the course was to commence on 10th August, 2000. The State had even requested the institute where the petitioner was studying, vide its letter dated 09th August, 2000, to issue attendance certificate every month for drawal and disbursement of his pay and allowances. It was claimed that the same was released to the petitioner only after receipt of the certificate from there.

11. Rule 73 of the Rules provides that the concerned Administrative Department shall be competent to sanction study leave without pay and allowances.

12. If the facts of the case in hand are considered, it is not the case of either of the party that the petitioner ever applied for study leave. Rather it a case where he had been nominated by the department to undergo the post-graduate course in terms of the scheme circulated by the Government of India, for which even tuition and examination fee was also paid by the Government of India. Besides this stipend of ₹ 2000/- per month was payable to outstation candidates only. Even the correspondence and the approvals while nominating the petitioner for undergoing the course clearly mentioned that during the period of study, the petitioner will be paid full salary and allowances. He was sent for this course to

learn advancements in Water and Waste Water Management Technologies, which is the major problem in any urban establishment. Rule 73 of the Rules will not be applicable in the case in hand, if the scheme of the Government of India and the nomination of the petitioner for the course by the State are considered.

13. For the reasons mentioned above, I find merit in the present petition. The same is, accordingly, allowed. The impugned order dated 29th August, 2003 is set aside.