
(1999) 02 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 3401 of 1995

Rajanikanta Das (DR.)

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 04-02-1999

Acts Referred:

Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1983 — Rule 83
Assam Study Leave Rules, 1963 — Rule 14, 14(2), 3, 84
Constitution of India, 1950 — Article 14, 311

Citation : (1999) 2 GLT 95

Hon'ble Judges : M. Sharma, J

Bench : Single Bench

Advocate : A.H. Saikia, B. Saikia and A. Deb, for the Appellant; B. Goswami, for the Respondent

Final Decision : Allowed

Judgement

M. Sharma, J.—This writ petition has been preferred by the Petitioner for a direction from this Court to the Respondents to issue posting order in his post of Registrar in any of the Medical Colleges of Assam after regularising his entire period of prosecuting post graduate degree course as extraordinary leave without any break of service.

2. Petitioner's case is that he belongs to SC community and after passing MBBS degree joined as Demonstrator in the Deptt. of Anatomy under Regulation 3(f) and subsequently in the same year he was appointed and served on regular basis in an existing regular vacancy reserved for SC candidate as Registrar, ENT, Silchar Medical College with effect from 4.9.92. While working as such Petitioner got selected for admission in 2 years PG course in MS (Otorhinolaryngology) for the session 1993-95 to be commenced from 1.6.93 and accordingly Petitioner filed application to Respondent No. 2 for permission on 22.3.93 which was not attended to. Thereafter Petitioner filed application on 22.5.93 to Respondent No. 2 for extraordinary leave, through proper channel, that is the Principal, Silchar

Medical College and the same was forwarded to Director of Medical Education (Annexures-B1 and B2) and Petitioner's allegation is that this time also no reply was given. However, as the PG Course (MS) was to commence from 1.6.93 Petitioner joined the same after handing over the charge to the Head of the ENT Deptt, anticipating formal order from the concerned authority. But Petitioner received the impugned notification dated 28.9.93 (Annexure-C) after four months of joining the PG Course, notifying the release of the Petitioner for PG studies without his claim over the post in future. Immediately Petitioner filed representations (Annexure-D, E and F) which were not disposed of and only by the communication dated 8.8.95 (Annexure-H) Respondent No. 4 informed the Petitioner that Govt rejected the Petitioner's prayer for regularisation of leave and issue of posting order as per notification (Annexure-C). Petitioner's claim is that though the Petitioner has not completed 3 years, he is entitled to leave as some similarly situated doctors were granted extraordinary leave.

3. Respondent No. 3 has filed affidavit in opposition denying the claim of the Petitioner and averred that Petitioner is not entitled to extraordinary leave as he has not completed 3 years of regular service; that special recommendation can be granted only to those for study on "non clinical" subjects; that ENT being a clinical subject no recommendation was given to the Petitioner. It is further averred that the doctors who have been named in the writ petition were granted special leave as they are from "non clinical" subjects and that Petitioner was removed from service as per rule.

4. Mr A.H. Saikia, learned Counsel for the Petitioner has submitted that the Petitioner was regularly appointed in reserved quota of SC and, therefore, Respondents cannot release him as has been done in this case; that the action of removing the Petitioner is illegal, not tenable in law and hit by Article 311 of the Constitution of India. In support of his submission Mr Saikia relied on Rule 84 of the Fundamental Rules and Rule 3 of the Assam Study Leave Rules, 1963 and Rule 14 of the Leave Rules, 1934. Further submission of Mr Saikia is that no reasonable opportunity was afforded to the Petitioner in releasing him from service and the Petitioner was released only on the ground of prosecuting higher studies; that there was no such rule for making any distinction between clinical and non clinical course in granting extraordinary leave in the case of non completion of 3 years of service as stipulated under the Rule; that some doctors who had not completed 3 years of service were granted extra-ordinary leave to study in non clinical subject but Petitioner was discriminated and, therefore, the action of the Respondents is violative of Article 14 and 16 of the Constitution of India. For proper consideration of the case in hand the provisions of law relied upon by the Petitioner is reproduced below:

a) Fundamental Rule 84 reads as follows:

Study Leave 84: Leave may be granted to the Government servants, on such terms as the State Government may by general 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.

b) The Assam Study Leave Rules, 1963:

Rule 3 provides as follows:

Conditions for the grant of study leave:

(1) Subject to the conditions prescribed in these rules, study leave may be granted to a Government Servant, in or out of India, with due regard to the exigencies of public service, to enable him to undergo special course of study consisting of higher studies, or specialised training in a professional or a technical subject having a direct and close connection with the sphere of his duties or with work in the teaching line in the technical and professional subjects.

(2) Study leave shall not be granted unless-

(i) it is certified by the Government that the proposed course of study or training shall be of definite advantage from the point of view of public interest;

(ii) Study leaves 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.

(3) Study leave out of India shall not be granted for prosecution of study or undergoing training in subjects for which adequate facilities exist in India or under any of the schemes administered by the State Government or the Government of India.

(4) Study leave shall not ordinarily be granted to a Government Servant-

(1) who has rendered less than 5 years service under the State Government;

(ii) who is due to retire or has the option to retire from the Government service within three years of the date on which he is expected to return to his duties after expiry of the leave.

The Leave Rules, 1934:

Sub Clause (2) (iv) of Rule 14 reads as follows:

14.(I) Extraordinary leave without allowance may be granted to any officer in special circumstances:

(a) When no other leave is by rule admissible, or

(b) When other leave is admissible, but the officer concerned applies in writing for the grant of extraordinary leave.

(2) Except in the case of an officer in permanent employment the duration of extraordinary leave on any one occasion shall not exceed the following limits:

(iv) Twenty four months where the leave is required for the purpose of

prosecuting studies certified to be in the public interest, provided the Government Servant concerned has completed three years continuous service on the date of expiry of leave of the kind due and admissible under the rules (including three months extraordinary leave under (i) above).

5. Examining the Fundamental Rule 84 it is seen that leave may be granted to a Govt. servant on such terms to enable the officer to study scientific technical or similar problems or to undergo special courses of instruction which is not debited against the leave account Rule 3 of the Assam Study Leave Rules, 1963 provides that study leave may be granted to a Govt. servant with due regard to the exigencies of public service to enable him to undergo special course of study consisting of higher studies, or specialised training in a professional or a technical subject having a direct and close connection with the sphere of his duties. The condition is that the study leave cannot be granted unless the Govt. servant is certified that the proposed course of study/training shall be of definite advantage from the point of view of public interest. That, study leave shall not ordinarily be granted to a Govt. servant who has rendered less than 5 years service under the State Government. As it is seen, the point insisted by the Respondents is that the Petitioner did not complete his 3 years of service in the post he was holding. But, Rule 14 of the Leave Rules, 1934 provides that extraordinary leave without allowance may be granted to any officer in special circumstances- a) when no other leave is by rule admissible., or b) when other leave is admissible, but the officer concerned applies in writing for the grant of extraordinary leave. Further Rule 14(2) of the Rules, 1934 provides that extraordinary leave shall not exceed 24 months where the leave is required for the purpose of prosecuting studies certified to be in the public interest subject to completion of 3 years service. As submitted by Mr Saikia, learned Counsel for the Petitioner, Petitioner submitted several representations before the concerned Respondents which were not disposed of at all and the manner of releasing the Petitioner from a post reserved for SC candidates, is not provided under the Leave Rules, 1934. I find merit in the submission of the learned Counsel for the Petitioner that if the Petitioner is removed/released from the regular post Petitioner is entitled to the benefit provided under Article 311 of the Constitution, because removal/release from a regular post cannot be removal/release simpliciter; that such action is a flagrant violation of the provisions of law laid down in Assam Scheduled Caste and Scheduled Tribe (Reservation of Vacancy in Services and Posts) Act, 1978 and Rule 83 framed thereunder. I also find merit in the submission of the learned Counsel for the Petitioner that Petitioner was not informed by the Respondents in time that he would forego his regular post for prosecuting higher studies, in which case Petitioner would not have gone for prosecuting PG course and by not disposing the representation by a speaking order Petitioner was prejudiced and deprived the right to the post in which he was appointed on regular basis as a SC candidate.

6. Mr Saikia, learned Counsel for the Petitioner relied on the judgment and order dated 14.5.96 of this Court passed in Civil Rule No. 5250/95 and submitted that

the instant case is squarely covered by that decision of this Court. In that case the Petitioner on being selected by the Assam Public Service Commission (APSC) joined as Lecturer in Jorhat Engineering College at Jorhat. Petitioner received an offer from the University of Saskatchewan, Saskatoon, Canada to pursue a Master Degree Course in Electrical Engineering and the Petitioner who was very keen to pursue the said course applied for study leave in the prescribed form for two years and the application was submitted through proper channel. The course of study was due to commence from the month of September, 1991 and the application for leave was submitted in April, 1991, but the authority did not do anything with regard to this matter for these period of 5 months. Petitioner sent reminders but as nothing was done the Petitioner left for Canada to join the University. Petitioner successfully completed his MSc Degree and accordingly reported for his duty as lecturer in his earlier post and also submitted his joining report but he was not allowed to join on the ground that his leave to prosecute higher studies was not regularised by the authority. In that case it was held that it was known to the authority that the Petitioner was prosecuting his studies in Canada and if the authority did not grant leave it is the duty of the authority to inform the Petitioner in due course. Accordingly that writ petition was allowed with the direction to the Respondents to issue necessary order for posting of the Petitioner as Lecturer. It was further held that Petitioner shall be entitled to all his service benefits regarding seniority, continuity in service and other benefits save and except the salary for that period. Mr B Goswami, GA submitted that the above case is quite different from the instant Civil Rule and case in hand of the Petitioner cannot be covered by the above judgment and order.

7. As discussed above, the Petitioner approached the authority well in advance but the concerned authority/Respondents did not find it necessary to dispose of his representation indicating the consequence of such leave and without giving any opportunity Petitioner was removed from his service. In the instant case Petitioner has a cogent case as he had to join his PG Course on the date fixed for it failing which he might have lost his opportunity to study the said course. From the fact situation of the case it was open for the authority/Respondents to consider the case of the Petitioner who was a regular employees under them.

8. For the foregoing discussion and for the ends of justice, equity and fair play this Court consider it necessary to relax the conditions and set aside the impugned order. Accordingly, the impugned order dated 28th Sept, 93 under No. HLB. 142/93/106 issued by the Respondent No. 3 is set aside. Respondents are directed to issue posting order to the Petitioner in his regular post of Registrar, ENT in any of the Medical Colleges of Assam. After restoring the Petitioner to the said post the Respondents shall regularise the entire period of leave of the Petitioner as extraordinary leave. Respondents are further directed to complete the process within two months from the date of receipt of this order. Petitioner shall furnish a certified copy of this order alongwith a copy of the writ petition before the concerned Respondent to expedite the matter.

9. With the aforesaid direction the writ petition is allowed and disposed of.