
(2014) 03 RAJ CK 0157

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 19/2014

Rajendra Singh Tanwar

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Citation : (2014) 4 WLN 297

Hon'ble Judges : Amitava Roy, C.J;Veerender Singh Siradhana, J

Bench : Division Bench

Advocate : R.C. Joshi, Advocate for the Appellant; Ashok Gaur, Sr. Counsel, Ajay Choudhary, Advocate, Narpal Mal Lodha, Advocate General and V. Garg, Advocate for the Respondent

Judgement

Veerender Singh Siradhana, J.—The instant intra-Court appeal is directed against the judgment and order dt. 8th November, 2013 passed by the learned Single Judge dismissing the writ application preferred by the appellant/petitioner challenging the action of the State/respondents in granting leave to the non-appellant/respondent number 5 (Dr. Karmveer Singh Godara), in view of his admission to D.M. (Nephrology), against one seat reserved for "in-service candidate". Briefly, the essential material facts necessary for appreciation of the controversy raised in the intra-Court appeal are: That the appellant/petitioner and non-appellant/respondent number 5 applied for admission to D.M. (Nephrology), against one seat reserved for "in-service candidate". The appellant secured 72.5% whereas non-appellant/respondent No. 5 secured 78.5% and as a result, was selected on 23rd July, 2013. The appellant/petitioner projected a challenge to his selection in the writ application stating that since the non-appellant/respondent number 5, had already availed study leave and therefore, he could not be accorded further study leave in the face of Rule 112 of the Rajasthan Service Rules, 1951 (hereinafter referred to as the "Rules of 1951", for short). The challenge was also made to grant of leave to the non-appellant/respondent number 5, being against the public interest and contrary to the provisions of Rule 96 as well as Government of Rajasthan's decision below Rule

96, Rule 110, Rule 112 and Rule 119 as well.

2. The learned Single Judge taking into consideration the pleaded facts, materials available on record and the relevant Rules, declined to accede to the relief prayed for by the appellant/petitioner.

3. The learned counsel for the appellant/petitioner vehemently argued that the non-appellant/respondent number 5, having already availed of study leave, is not entitled to be accorded further study leave contrary to the mandate of the Rules. Further, leave either under Rule 96 or any other Rule is not admissible, to fortify his submissions, reliance was placed on the opinion of the Hon'ble Supreme Court in the case of State of Punjab and Others Vs. Dr. Rajeev Sarwal, and State of Gujarat Vs. Bai Fatima and Another, .

4. We have heard the learned counsel for the appellant/petitioner and perused the materials available on record as well as the impugned order passed by the learned Single Judge.

5. The entire thrust of the argument of the learned counsel for the appellant/petitioner has been on the anvil of Rule 96, 110 and 112 of the Rules of 1951. Rule 96 provides for conditions subject to which a Government servant, in special circumstances, may be granted the extraordinary leave. Rule 110 deals with admissibility of study leave and Rule 112 stipulates conditions for grant of study leave.

6. From a bare glance at the text of Rule 96, it is evident that it deals with the special circumstances, where a Government servant may be granted extraordinary leave and thus, operates entirely in a different field as compared to the mandate of Rule 110 and 112, which deals with the admissibility and conditions for grant of "study leave". The Government of Rajasthan's decision below Rule 96, details out the conditions for relaxing the provisions of Rule 96 on the ground of prolonged illness of the Government servant concerned or to enable him to undertake different courses of studies.

7. Having regard to the operation of Rule 96 and Rule 110 as well as Rule 112, it would be evident that the Rules operate entirely in two different fields. The Rules relating to admissibility and conditions for grant of "study leave" (Rule 110 and 112), cannot be read into Rule 96, which deals with grant of "extraordinary leave" under the circumstances stipulated therein. The very concept of "extraordinary leave" would lead to inference that the leave is granted to a Government servant when no other kind of leave is admissible.

8. The learned Single Judge while appreciating the opinion of the Hon'ble Supreme Court has rightly distinguished the applicability of the opinion to the facts of the case at hand, which are completely different from the case referred to and relied upon and therefore, the judgments cited have no application.

9. Having considered the facts, circumstances and materials available on record, we find no reason to adopt a different opinion than the one arrived at by the

learned Single Judge, while dismissing the writ petition of the appellant.

10. In the result, we do not find any substances in the intra-Court appeal and the same deserves to be dismissed.

11. Ordered accordingly.

12. In view of the final adjudication on the intra-Court appeal, the stay application stands closed. However, in the facts and circumstances of the case, there shall be no order as to costs.