

(1993) 12 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 121 of 1993

Shivnandan Singh

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 10-12-1993

Acts Referred:

Jammu and Kashmir Study Leave Rules, 1979 — Rule 61, 73

Citation : (1994) JKLR 534 : (1994) 2 SCT 439 : (1994) 2 SCT 129 : (1995) SriLJ 202

Hon'ble Judges : B.A.Khan, J

Bench : Single Bench

Advocate : V.R.Wazir , D.S.Chauhan, Advocates appearing for the Parties

Judgement

1. The petitioner is a ClassIV employee and was working as an orderly in the office of the Divisional Youth Services and Sports Office in Jammu.

He graduated while in service and then worked his way for being deputed to undergo B.P.Ed course at the Physical Education College,

Gandergal. His case was first recommended by the Divisional Sports Officer to the Director of Youth Services and Sports vide communication

dated 30.1.1993 and then to the Commissioner/ Secretary, Education Deptt., by his letter dated 30.3.1993. This recommendation seems to have

been accepted culminating in Government Order No. 1194Edu of 1993 dated 30.4.1993 under which study leave was granted to him for

undergoing B.P.Ed. Course. He joined at the college pursuant thereto, paid the fee and was granted provisional admission. While he was still trying

to find his feet, his study leave was cancelled by Government Order No. 1338Edu of 1993 dated 31.5.1993, consequently cancelling his

deputation to the course also. He feels aggrieved and has challenged this order

primarily on the ground that it has been passed at his back without any notice to him and in violation of the principles of natural justice. It is submitted that he is eligible to undergo the course and there is no provision in the rules to cancel the study leave once it is granted.

2. Objections have been filed by the respondents supported by an affidavit shown by the Principal of the training college. No affidavit has been filed by any functionary of the Government to justify the order impugned. The stand taken is that since the petitioner is a Class IV employee, he was neither entitled to grant of study leave nor eligible to undergo the course. He was also not selected by the Director of Youth Services, who alone was competent to select and depute in service candidates for training course. It is submitted that the study leave could be granted to him only by the General Deptt. (tri) on the recommendation of the administrative department and with the sanction of the Finance Deptt. in terms of Rule 73 of the Study Leave Rules of 1979. It is also pointed out that the candidates for B.P.Ed, training course are selected by the direct selection for which notification was issued on 24.12.1992 inviting applications from the candidates. In addition in service candidates are selected by the Director, Youth Services and Sports and deputed for the course keeping in view their qualifications and length of service. The select list of these candidates is prepared on the recommendation of the respective Distt/Divisional Youth Services and Sports Officers. Since the petitioner does not figure in the select list of Director wherein only physical teachers have been deputed for training course, he has no right to be admitted to the course on the basis of Government Order No. 1185 of 1993.

3. I have heard learned counsel for the parties.

4. Admittedly, there are no rules prescribing any procedure/guidelines/criteria and eligibility for selection of in service candidates. In case of candidates applying for direct selection the eligibility prescribed is that they should be graduates and should have minimum sports career of having represented the University/State in Junior/Senior nationals in any recognised sports discipline and should also be under 32 years of age and so on.

Therefore, it is not possible to hold that the petitioner is not eligible for the course being an orderly when no rule, order or notification requires that

the in service candidate for the B.P.Ed course must be a physical education teacher first. It is not denied that he is a graduate. He has also participated in some national sports events. That way he fits the bill as an in service candidate unless respondents show some rule or order under which he was required to be a physical education teacher first. Since they have not shown anything on this count, petitioner's eligibility cannot be questioned.

5. Whether an orderly is not entitled to study leave, may not be of such relevance but all the same perusal of the 1979 rules shows that he is not disentitled to seek the study leave. Rule 61 makes the position clear in this regard and provides that the study leave may be granted to a Government servant, which must be interpreted to include an orderly also. Similarly subrule (4) of this rule does not insist on a service of 5 years having been rendered by an employee in all events. It only says that the study leave shall not ordinarily be granted to an employee if he has not completed 5 years service. As regard the authority who is competent to sanction study leave, rule 73 does lay down that the General Department (Trainings Branch) may grant leave under these rules for the purposes of study in India. But, they by itself does not authorise the respondents to challenge their own order. Admittedly, there is no provision for cancellation of the study leave once granted under these rules.

6. All this has been brought out only to meet the contentions raised by Mr. Chauhan that the petitioner was not entitled to grant of study leave which has been granted to him by an incompetent authority and was not thus liable to be admitted to the course. The matter, however, does not rest at that. The moot question that falls for consideration is: whether the Government Order NO. 1185 of 1993 sanctioning the study leave to the petitioner from undergoing B.P.Ed, course could be rescinded at his back and whether the bypassing of the Director would disentitle him from pursuing the course.

7. There can be no denial to the fact that a right accrued to the petitioner to proceed on study leave for undergoing B.P.Ed, course on passing of Govt. Order No. 1185 of 1993. It is also a matter of record that he joined at the College and was granted provisional admission pursuant thereto.

He could be divested of his right to pursue the course only in accordance with the

procedure established by law and in conformity with the principles of natural justice. It is not the case of the respondents that there are any rules or regulations in force on the basis of which he was ineligible to pursue the course or which envisaged that he could be deputed for the course only by the particular authority and in accordance with some kind of a selection procedure. All that is made out is that the inservice candidates are picked up by the Director, Youth Services and Sports and since the petitioner has not been selected by him. He was not entitled to be granted admission. It is not known what authorised the Director to select the in service candidates and from whom and what mode of selection he was required to follow in the matter. That being so, the petitioner cannot be faulted for not having routed his case through the Director, It would indeed be a different matter if in service candidates had to go through the selection procedure and the petitioner was found to have bypassed that procedure. That is not the case here. The petitioner has undoubtedly been cleared for study leave by the Government and the Director being a subordinate authority to the Government could not prevent him from pursuing the course as the same would tantamount to superseding the orders of the Government. Similarly the impugned order (Government Order No. 1338 of 1993) could not be passed at the back of the petitioner and without a notice of show cause ^to him. As already noticed, a right had accrued to the petitioner to pursue the course and he could be deprived of the same only by adhering to the principles of natural justice.

8. It is immaterial if the order passed against him is an administrative order so long as it cause prejudice to his interest. The compliance with the rules of natural justice becomes necessary to prevent miscarriage of justice and to secure fair and impartial order besides to check arbitrariness.

Respondents have nowhere indicated that a show cause notice was issued to him or he was heard in the matter at any stage. The impugned order is consequently vitiated and requires to be quashed. Mr. Chauhan, learned counsel for the respondents has cited 1993 AIR SCW 2695 [SIC] which is distinguishable and not relevant on the point.

For the reasons stated above I allow this petition and quash Government Order No. 1338 of 1993 dated 31.5.1993 and command the

- respondents to allow the petitioner to pursue the B.P.Ed, course at the Physical
9. Education College, Ganderbal.
10. C.M.P. No. 389 of 1993 shall stand disposed of accordingly.