
(2013) 07 RAJ CK 0199

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 190 of 2013

State of Rajasthan and Another

APPELLANT

Vs

Dr. Yogendra Taneja and Others

RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Citation : (2013) 4 CDR 1935 : (2014) 1 RLW 214 : (2014) 3 SCT 302 : (2014) 2 WLN 197

Hon'ble Judges : Gopal Krishan Vyas, J; Banwari Lal Sharma, J

Bench : Division Bench

Advocate : G.R. Punia, A.A.G. and Mr. Yashpal Khileri, for the Appellant; Arpit Bhoot /Mr. Manish Pitliya, for the Respondent

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—In all the above special appeals filed by the State Government through the Chief Secretary, Government of Rajasthan and another, the controversy involved is identical, therefore, all the above three special appeals are being disposed of by this common judgment. For the sake of convenience, the facts of D.B. Special Appeal (Writ) No. 190/2013, State of Rajasthan & Anr. vs. Dr. Yogendra Taneja & Ors. are hereby taken into consideration. The State Government is challenging the validity of the judgment dated 10.09.2012 passed by the learned Single Judge in S.B. Civil Writ Petition No. 5586/2012, Dr. Yogendra Taneja & Ors. vs. State of Rajasthan & Anr., by which, the learned Single Judge allowed the writ petition and orders Annex.-6 and Annex.-7 dated 02.03.2012 and 29.03.2007 respectively were declared inoperative to the extent they relate to the writ petitioners who were admitted to Post Graduation courses as a consequent to their selection by facing Pre-P.G. Medical Entrance Examination 2011 and were declared entitled for receiving full emoluments with other service benefits up to 01.03.2012 and, further entitled to have full emoluments alongwith other service benefits while serving as resident doctors.

2. Brief facts of the case are that all the respondents preferred writ petition before the learned Single Judge narrating the facts that they are in-service medical officers of the State Government and they were posted in rural areas and completed three years of service or two years of continuous service in the rural area of desert and hilly or scheduled area of the State, therefore, they were given incentive by the State Government for further study of post graduate course so as to improve the medical facility for the people of the State. The respondent writ petitioners took admission in the post-graduate studies for which they submitted certificate in the prescribed format duly signed by the Director, Medical & Health Services Government of Rajasthan to that effect being fully qualified candidates and appeared in the competitive examination of Pre-P.G. Medical Examination 2011. The respondent medical officers were selected in accordance with booklet (Pre-P.G. Medical Entrance Examination 2011) for admission in P.G. course. Thereafter, they have been allotted subjects after due counseling and admitted in the P.G. course in the concerned allotted medical colleges.

3. The respondents gave their joining report to the concerned medical colleges and executed surety bond for an amount of Rs. 5,00,000/- as an undertaking for completing the entire course and in case of leaving the P.G. course before completion to pay amount of Rs. 5,00,000/- to the State Government. Not only this, all the respondents were directed to give personal bond to the effect that they will serve in the State for 10 years with the Government after completion of the course and will not take voluntary retirement and in case of leaving the service prior to the period of 10 years by availing voluntary retirement or resignation or otherwise the candidate shall deposit Rs. 10,00,000/- to the Government.

4. The respondent writ-petitioners so selected were assigned various medical colleges where they are required to discharge 20 hours duty as resident doctors in the hospital attached to the concerned medical college. As per the respondents, for all purposes they were to be treated as in-service candidates of the State Government because they were discharging more hard duty than they were discharging duties in the rural areas of the State.

5. In the writ petitions, it is averred by the petitioners that the P.G. course is of three years duration and, during last ten years, thousands of medical officers completed P.G. course and they were paid full emoluments as medical officers, therefore, the writ petitioners were also required to be paid emoluments as medical officers and they were to be allowed all the service benefits of increments and leave.

6. According to the respondents, for last ten years when applications were invited for P.G. course from the serving medical officers were never informed about the fact that they are required to undergo the course on study leave. The respondent-petitioners and similarly situated persons had nothing to even imagine that they will be abruptly asked to take study leave and they will be paid

only stipend. All of sudden, an order dated 02.03.2012 was communicated to the respondent writ-petitioners to give their option treating them on study leave and they will be paid stipend. The said order dated 02.03.2012 was further clarified by order dated 29.03.2012 wherein it was said that up to 01.03.2012 on duty medical officers and all P.G. courses will be paid emoluments as they were getting but the writ-petitioners were asked to submit their option for payment of emolument in the form of stipend.

7. In the writ petition, the writ-petitioners submitted that under legitimate expectation they joined the post-graduate course which they are pursuing as medical officers named as resident doctors, therefore, entitled to get full emoluments and service benefits. But, the State Government issued orders dated 02.03.2012 (Annex.-6) and 29.03.2012 (Annex.-7) arbitrarily which are against the mandate of Articles 14, 16, 21 and 23 of the Constitution of India. The respondents stated in the writ petitions that under the legitimate expectation they joined the P.G. course on the assumption that they will be paid full emoluments and other service benefits during the entire period of P.G. course, as the Government has taken surety bond and personal bond to the effect that after completion of the course they will serve the State Government for at least ten years and will not leave the course otherwise they shall pay the amount mentioned in the bond, therefore, once the petitioners were compelled to execute the surety bond and personal bond not to leave the course, then, the said right to get full emoluments during the course cannot be snatched by the State Government, therefore, the order dated 02.03.2012 and 29.03.2012 are unconstitutional.

8. The main ground taken in the writ petitions by the respondent writ-petitioners was that as per the basic feature of the Constitution of India by Article 23 of the Constitution of India there should be complete prohibition of traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. But, in the present case, the State Government is taking surety and personal bonds for completing the course and after completion of the course to serve the State Government for ten years and they are discharging duties as resident doctors in the hospital to serve the general public. But, by the impugned order the State Government is asking the resident doctors and compelling them to serve as resident doctors on study leave, therefore, it is nothing but exploitation which is prohibited under Article 23 of the Constitution of India. Therefore, both the orders deserve to be quashed.

9. The State Government filed detailed reply to the writ petition and submitted that in-service candidates were granted opportunity to pursue the P.G. course being in-service candidates for which, according to the provisions contained in the Rajasthan Service Rules, 1951, they were to be granted study leave and emoluments are to be paid as per Rules 92 to 112 of the RSR, in which, only half of the salary is to be paid during the said period while calculating their service

period for pension and seniority. In the reply, it is stated that the co-ordinate Bench of this Court at Jaipur Bench, in S.B. Civil Writ Petition No. 4415/2010, Smt. Suman Kumari vs. State of Rajasthan passed detailed order on 30.08.2011 and directed that nobody would be allowed study leave benefit in contravention of the provisions of the RSR. The above order was passed by the co-ordinate Bench while following the judgment of Hon''ble Supreme Court rendered in the case of State of Rajasthan vs. Sushil Sharma, SLP ? No. 6037/1999, Civil Appeal No. 6283/2001, decided on 10.08.2001. Therefore, no other benefit except as provided in the RSR can be given to the petitioners during the course of acquiring P.G. qualification by them and as such the doctrine of legitimate expectation will not come in way because there are specific provisions for granting emoluments during the period when government employees are acquiring higher qualification.

10. After filing the reply to the writ petition, the matter was finally heard by the learned Single Judge and finally decided vide judgment dated 12.09.2010 whereby the learned Single Judge held that orders dated 02.03.2012 and 29.03.2012 are declared inoperative to the extent they relate to the petitioners who were admitted to the post graduate course as a consequent to their selection by facing Pre-P.G. Medical Entrance Examination 2011 and they were declared entitled for receiving full emoluments with other service benefits up to 01.03.2012 while serving as resident doctors. In these special appeals, the said judgment is under challenge.

12. Learned Addl. Advocate General vehemently argued that the judgment under challenge is totally in contravention of the provisions of the RSR in which a government employee pursuing higher study is entitled to get emoluments during the course. It is true that the respondent writ-petitioners were directed to execute the bonds but those bonds were required to be executed by all those employees who pursued higher studies as per the provisions of the RSR but this fact is completely ignored by the learned Single Judge, therefore, the judgment impugned is not sustainable in law. Learned Addl. Advocate General Mr. G.R. Punia, assisted by Dy. Government Counsel Mr. Yashpal Khileri submitted that the question of admissibility of study leave is governed under Rules 109 to 121 of the RSR. The condition for grant of study leave is prescribed under Rule 112 and complete process is provided in the Rajasthan Service Rules, 1951 for grant of benefits and study leave in the above provisions, therefore, the ground of legitimate expectation is totally irrelevant in this case because the service conditions including the question of study leave of the employees of the State Government are required to be dealt with as per the provisions contained in the Rajasthan Service Rules, 1951. It is urged by learned Addl. Advocate General that this question was considered by the coordinate Bench of this Court at Jaipur Bench in the case of Smt. Suman Kumari vs. State of Rajasthan, S.B. Civil Writ Petition No. 4415/2010 decided on 30.03.2011 along with 15 other writ petitions, in which, learned Single Judge of this Court at Jaipur Bench thoroughly considered all aspects of the matter and gave certain directions to grant

emoluments as per the provisions of the RSR, therefore, learned Single Judge ought to have considered this aspect of the matter because the judgment of the coordinate Bench at Jaipur Bench was rendered while following the judgment of the Hon''ble Supreme Court in the case of State of Rajasthan vs. Sushil Sharma, SLP (C) No. 6037/1999, Civil Appeal No. 6283/2001, decided on 10.08.2001, in which, the Hon''ble apex Court gave clear direction that for salary during the course of study leave of in-service candidate the State Government cannot give complete good-bye to the provisions of the Rajasthan Service Rules, 1951. Therefore, the learned Single Judge was under obligation to consider this aspect of the matter but the learned Single Judge completely ignored the judgment rendered by the co-ordinate Bench of this Court in the case of Smt. Suman Kumari (supra) which is passed while following the judgment of the Hon''ble Supreme Court.

13. Lastly, learned Addl. Advocate General submits that every government employee was desirous to acquire higher qualification in public interest or State Government is allowing study leave in public interest to acquire higher qualification and, during that period of study leave, the emoluments as provided in the RSR may be paid and no other benefit other than as provided in the RSR can be given, therefore, the impugned judgment rendered by the learned Single Judge deserves to be quashed.

14. Per contra, Mr. Arpit Bhoot and Mr. Manish Pitaliya vehemently submitted that all the respondent writ petitioners took admission after passing the Pre-P.G. Examination in different subjects after due satisfaction that they will be paid full salary during the course and State Government granted the said benefit but abruptly the Government snatched the said right which is not permissible under the law. Both the learned counsel invited attention of this Court towards judgment of the Hon''ble Supreme Court reported in Ram Pravesh Singh and Others Vs. State of Bihar and Others, , Ram Pravesh Singh vs. State of Bihar and submit that concept of the doctrine of legitimate expectation can be invoked where the promise is made by an authority either expressly or impliedly or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. Here, in this case also, it is past practice of the Government to pay full emoluments to the doctors who were admitted in the P.G. course because the State Government is utilizing their services as resident doctors, therefore, in view of the aforesaid judgment even though RSR provisions are contrary but due to the doctrine of legitimate expectation the State Government cannot deny full emoluments to the writ-petitioners and learned Single Judge has rightly considered the merit of the case and the ground of legitimate expectation while passing the impugned judgment.

15. According to learned counsel for the respondents, it is a case in which a benefit which is extended to the respondent writ-petitioners at the time of taking admission in the P.G. course has been snatched by another order which is totally unwarranted action, therefore, the learned Single Judge does not require

interference because the learned Single Judge has not restrained the State Government from following the rules in future and, therefore, did not quash the orders passed by the State Government but only held that those orders will not be operative in respect of the petitioners.

16. After hearing learned counsel for the parties, we have examined the entire facts and law relating to the claim made by the respondent writ-petitioners, so also, the finding given by the learned Single Judge.

17. First of all, it is important to observe that there is complete procedure laid down in the RSR for grant of study leave under Rules 109 to 121. Every government employee who is desirous to acquire higher qualification, for that, the State Government is granting permission in public interest to acquire higher qualification and, during that period, such government employee can claim emoluments as per the provisions of the RSR.

18. In whole of the judgment, learned Single Judge nowhere observed that the provisions of the RSR are not applicable in the case of government servants pursuing higher studies; meaning thereby, the rules are required to be made applicable uniformly upon all the employees including the doctors. No separate provision is in existence in the RSR for granting full benefits of salary.

19. There is complete fallacy in the argument of learned counsel for the respondent writ-petitioners that before admission to the P.G. course the petitioners executed bond to serve the State, therefore, emoluments cannot be denied. For this purpose, it is very relevant to observe that under Rule 121-A of the RSR there is provision for execution of bond to serve the State for those employees who avail study leave admissible under the provisions of the RSR. Therefore, the ground taken by the writ petitioners in their writ petitions which is not considered by the learned Single Judge while giving complete good-bye to Rule 121-A of the RSR is not sustainable.

20. It is true that in the event of non-availability of any rule the benefit can be claimed on the basis of legitimate expectation; but, here, in this case, for all the employees of the State Government specific provision is in existence for grant of emoluments under Rules 109 to 121 of the Rajasthan Service Rules, 1951. This aspect of the matter was considered by the Hon'ble Supreme Court in Sushil Sharma's case (supra), in which, it was held that one cannot be allowed any benefit contrary to Rule 112, read with Rule 97 of the Rajasthan Service Rules, 1951. Following adjudication is made by the Hon'ble Supreme Court in the aforesaid judgment:

The only question which arises for consideration is whether the doctors like the respondents who take study leave are entitled to get full pay or not. It is not in dispute that prior to amendment in Rajasthan Service Rules, 1951 in 1979, the original rule contemplated that whenever an employment on study leave he would be treated as being on deputation and would thereby be entitled to be paid full salary. On 16 June, 1979 rule 112 was amended and as result there of

read with rule 97 "whenever an officer went on study leave he was to be entitled to half pay leave only".

The respondents went on study leave and claimed full salary on the ground that some other doctors similarly situated had been allowed full salary by regarding them as being on deputation. In view of the aforesaid fact the writ petitions were allowed. Hence this appeal.

Mr. Pallav Sisodia, learned counsel for the respondent draws our attention to an order which had been passed on 13 November, 1998 in the case of three other service doctors who while being nominated to filling up available vacancies for studying in the course of Ayurvedi Vachaspati (MD) were also permitted to work on the existing posting and thereby, they become entitled to get full salary. It is submitted by the learned counsel for the respondents that discriminatory treatment cannot be meted out by the appellant-State.

The rules make it quite clear that any person who goes on a study leave would be entitled to only half the salary. In the present case neither the respondents were sent on deputation or were they required to continue to discharge their existing duties in addition to their undertaking the course of study. This being the position, the respondents were not entitled to receive any salary in addition to one contemplated by Rule 112 read with Rule 97 as amended in 1979. As far as the argument placed on article 14 is concerned, it is now being well settled that two wrongs don't make a right. Merely because some other office has been given an unwarranted favour can be no ground for the rules being allowed to be violated and payment made out of the public exchequer when it is not due while allowing these appeals, we should also expect the applicant state to see that the rules are not circumvented or violated as seem to have been done in cases other than those of the respondents.

We have also examined the judgment of the Hon'ble Supreme Court, cited by learned counsel for the respondents in the case of Rampravesh Singh (supra). It is true that there is duty cast upon the State to act fairly but, here, in this case, the respondent writ-petitioners are claiming full salary as a matter of right contrary to the provisions of the RSR which are made applicable to all the government employees when they are going to pursue higher studies even in public interest. Therefore, there is no question of applicability of the doctrine of legitimate expectation in this case.

21. It is very pertinent to observe that every employee of the State Government can be permitted by the State Government to acquire higher qualification in public interest; but, for the same, he is required to seek leave as per the provisions of the RSR and there is no provision to allow any employee to acquire higher qualification without obtaining study leave. Of course, for the doctors desiring to pursue P.G. course there are some seats reserved for the in-service candidates but that does not create any right to those candidates who get admission to acquire postgraduate degree as in-service candidates because

specific mandatory provision for grant of study leave is incorporated in Rule 112 of the RSR which reads as under:

Rule 112. Condition for grant of Study Leave.--(1) Study leave shall be granted to enable a Government servant:--

(i) to pursue a course of study or investigation of a scientific or technical nature either in India or outside India provided that it is certified by the authority competent to sanction that the grant of study leave will be in the interest of the working of the department or the service to which the Government servant belongs.

The authority competent to grant study leave shall ensure that it is not granted to a Government servant with such frequency work or to cause cadre difficulties owing to his as to remove him from contact with his regular absence on leave. A period of 12 months at one time should ordinarily be regarded as a suitable maximum and should not be exceeded save for exception reasons.

(ii) The total period of study leave during the entire period of service of a Government servant shall not be more than 24 months. It may be taken in one spell or more than one spell. Study leave may be combined with other kinds of leave, but in no case shall the grant of this leave in combination with leave, other than extra-ordinary leave, involve a total absence of more than twenty-eight months from the regular duties of the Government servant.

(2) Study leave is extra leave on half pay and leave salary during such leave shall be regulated in accordance with Rule 97(2).

22. As per aforesaid Rule 112(2), there is provision in which it is provided that study leave is extraordinary leave on half pay and leave salary shall be regulated as per Rule 97(2) of the Rules which reads as under:

97. Amount of leave salary admissible in respect of leave of each kind.--
(1).....

(2) An Officer on half pay leave or leave not due will be entitled to leave salary equal to half the amount specified in sub-rule (1) above subject to a maximum of Rs. 23000/-

Provided that this limit shall not apply if the leave is taken on medical certificate or for pursuing an approved course of study otherwise than on study leave terms.

23. Upon perusal of Rule 97(2) of the RSR, an employee can claim emoluments but no other benefit is available under the RSR. Of course, there is provision for study allowance but that, too, cannot be claimed as a matter of right. Here, in this case, the claim of the respondent writ petitioners is totally against the provisions of the RSR, therefore, the finding given by the learned Single Judge is not in accordance with law because none of the provisions of the RSR have been considered in proper manner. For the purpose of granting full benefits of emoluments during the course of study the provisions of the Rajasthan Service

Rules are required to be followed. Therefore, no other direction can be issued when specific provisions are in existence.

24. In view of the aforesaid, we are of the opinion that the judgment rendered by the Single Bench of this Court at Jaipur Bench in the case of Smt. Suman Kumari (supra), decided on 30.08.2011 along with other 15 writ petitions, is correct because in the said judgment Rule 112 of the RSR and judgment of the Hon"ble Supreme Court in State of Rajasthan vs. Sushil Sharma (supra) were taken into consideration. In this view of the adjudication, no other emoluments except the emoluments provided in the RSR can be allowed for acquiring higher qualification even in public interest. Under the RSR it is mandatory for every employee to take study leave, therefore, the judgment rendered by the learned Single Judge, impugned in these special appeals, deserves to be quashed. Accordingly, all the above three special appeals are allowed. Impugned judgment dated 10.09.2012 passed by the learned Single Judge in S.B. Civil Writ Petition No. 5586/2012, Dr. Yogendra Taneja & Ors. vs. State of Rajasthan & Anr., so also, judgment dated 11.10.2012 passed in S.B. Civil Writ Petition No. 9835/2012, Dr. Pankaj Kumar Jain & Ors. vs. State of Rajasthan & Anr. and S.B. Civil Writ Petition No. 7570/2012, Dr. Yogesh Tiwari & Ors. vs. State of Rajasthan & Anr. are quashed and set aside. However, the State Government is directed to grant emoluments and other benefits to the respondent writ-petitioners as per the provisions of the Rajasthan Service Rules, 1951 for the period in which they acquire higher qualification of P.G. course.