

(1997) 09 GAU CK 0053

In the Gauhati High Court

Case No : Writ Appeal No. 36 of 1993 in Civil Rule No. 30 of 1990

State of Tripura and Others

APPELLANT

Vs

Dr. Sujit Chakraborty

RESPONDENT

Date of Decision : 09-09-1997

Acts Referred:

Constitution of India, 1950 — Article 14

Tripura State Civil Services (Leave) Rules, 1986 — Rule 44

Citation : (1998) 2 GLR 1

Hon'ble Judges : M. Ramakrishna, C.J;N.G. Das, J

Bench : Division Bench

Advocate : A. Ghosh, G.A, for the Appellant; K.N. Bhattacharjee and S. Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

M. Ramakrishna, C.J.—Dr. Sujit Chakraborty, the Respondent herein, was the Petitioner in Civil Rule No. 30/90 which came up before the learned Single Judge of this Court. By an order made on 30th July, 1993, the learned Single Judge of this Court passed the following order:

Heard Mr. K.N. Bhattacharjee, learned Counsel for the Petitioner.

It is submitted by Sri K.N. Bhattacharjee, Sr. Advocate that this matter is covered by a decision of this Hon"ble Court reported in Civil Rule No.-2 of 1987, date of order 19.7.90. In terms of that judgment I direct that the service of the Petitioner from 1.11.84 to 15.2.87 shall be on duty and he will be entitled to get all service benefits after deducting the amount, if any, received by him as stipend etc. This is to be implemented by the Respondents within a period of three months.

It is this order which is called in question in this writ appeal for the grounds taken therein by the State Government.

2. A few facts which are necessary for disposal of the appeal as follows:

The writ Petitioner/Respondent had been serving the State of Tripura as Medical Officer, Grade-IV Tripura Health Service, at the G.B. Hospital, Agartala, at the relevant point of time. By virtue of a notification issued by the Govt. of Tripura calling applications from eligible candidates to avail the benefit of undying in All Indian Institute of Hygiene and Public Health at Calcutta, which is a Post-Graduate degree, Pursuant to the said notification, the writ Petitioner applied. He wanted to avail the benefit of this study course at Calcutta. The Govt. of Tripura permitted him to avail the study programmed subject to a ailment of leave by the Petitioner in accordance with law.

3. Thus, the Respondents/Petitioner went to Calcutta and completed his study. After returning, he filed the above writ petition seeking for a writ of mandamus by way of a direction to the Respondents therein to treat him as on duty during the period while he was doing the studies in Calcutta. This writ petition was opposed by filing a detailed statement of objections by way of a counter on behalf of the State. It is very unfortunate that the learned Single Judge without applying his mind and without referring to the counter, proceeded to allow the writ petition solely based upon the precedent. viz., the order said to have been passed by him in Civil Rule No. 2/87 disposed of on 19.7.90, allowed the writ petition. It is this order which is called in question by the State Government in the appeal on more than one ground.

4. We have heard the learned Counsel on both sides.

5. The learned Govt. Advocate who has taken us through the grounds of appeal as well as the documentary evidence produced including the order of the learned Single Judge under appeal, firstly argued that the judgment and order of the learned Single Judge based upon the order said to have been made in Civil Rule No. 2/87 disposed of by the learned Single Judge (Mr. Justice J.N. Sarma) on 19.7.90, is wholly erroneous and cannot be sustained in law inasmuch as the learned Single Judge failed to notice the specific stand taken by the State Government in paragraph 15 of the counter presented opposing the writ petition.

Secondly, the learned Single Judge ought to have seen as to what are the specific rules, the provisions of law dealing with grant of special leave for study and without applying the said provisions of law to decide the real question, the writ petition ought not be have been allowed merely because there was a precedent which was based upon a different set of facts and circumstances.

Thus the argument of the learned Govt. Advocate is that the order under appeal cannot be sustained from all these circumstances and the same is liable to be set side.

6. Opposed to these argument, Mr. Bhattacharjee, the learned Counsel for the Respondent/Petitioner maintained that:

In view of the provisions of Fundamental Rule 9(6)(b) of the Fundamental Rules made applicable to the State of Tripura, the Respondent shall be entitled for the

benefit to treat him as on duty during the period of his study at Calcutta.

Secondly, regard being had to the precedents created by the State of Tripura, where under similar circumstances, the Government permitted certain other persons similarly situated to avail the benefit and considered them as on duty during the period they were on study leave, the submission of the learned Counsel for the Respondent is that the view taken by the learned Single Judge is justified.

7. We will first consider the provisions of Rule 44 of the Tripura State Civil Services (Leave) Rules, 1986. It is not in dispute that for all purposes of the Service Rule, a Government servant serving in the State of Tripura, is governed by the provisions of these Rules. There is no doubt about that. It is also not in dispute that Rule 44 is made applicable for all those Government employees who intend to avail the study leave. We will extract the provisions of Rule 44 hereunder:

44. Maximum amount of study leave.

The maximum amount of Study leave, which may be granted to a Government servant shall be -

(a) ordinarily twelve months at any one time, and

(b) during his entire service, twenty-four months in all inclusive of similar kind of leave for study or training grant under any other rules.

(emphasis supplied)

8. The learned Govt. Advocate argued that the State has been good enough to make available the Commissioner and Secretary to the Govt. of Tripura, Department of Health and Family Welfare who is well-versed in regard to these Rules. Based upon the instructions given by the Commissioner, it is argued that there is no other provision than Rule 44 of the Service Rules dealing with the grant of leave to the Government servants in Tripura.

Secondly, the provisions of the Fundamental Rules framed by the Parliament and approved by the Govt. of India, though are made applicable to certain set of Govt. servants, these Rules would not over-ride the provisions of the Tripura State Civil Services (Leave) Rules, 1986. It is plain that the said Tripura State Civil Services (Leave) Rules, 1986. being statutory and made applicable to the State Govt. employees, will prevail over the Fundamental Rules. Therefore, we will have to consider whether the argument advanced on behalf of the Respondent in regard to Rule 9(6)(b) of the Fundamental Rules could be applied to the facts and circumstances of this case. We will extract Rule 9(6)(b) of the Fundamental Rules:

Conditions for treating training as duty-

It has been decided that the authorities competent to appoint the Government

servant to the post for which the training is essential may be empowered to treat the period of training or instruction in India of Government servants as "duty" under this rule, subject to the following conditions:

(a) the training or instruction should be in India;

(b) the training or instruction should be connected with the post which the Government servant is holding at the time of placing him on training or instruction:

(emphasis supplied)

Looking to the language employed in this rule, it is made clear that the nature of the studies undertaken by the Respondent is not essential for the post held by him in the State of Tripura. In other words, it is nobody's case that the nature of study imparted to him at Calcutta by way of Post-Graduate study is essential for the post of Doctor held by him in Tripura. Therefore, to that extent, the provisions of Rule 9(6)(b) are not applicable. In that view of the matter, the first ground stays.

9. We will now deal with the second ground urged by the learned Counsel for the Respondent. According to him, there are precedents created by the State Govt. of Tripura wherein, under similar circumstances, the benefit is extended to other employees treating them as on duty while they were availing study leave. In that view, it was argued that the Government had passed an order on 15th June, 1988, extending the benefit to trainees in Public Health Nursing course in respect of certain Nurses in the State of Tripura. A copy of the same has been produced and marked as Annexure-8 to the Civil Rule No. 30/90. Similarly, in Annexure-9, a copy of the Diploma in Public Health Nursing issued by the Govt. of India at the All India Institute of Hygiene and Public Health has been produced. We have perused the same. The submission of the learned Counsel for the Respondent is that by virtue of the benefit having been extended to the persons by the Govt. of Tripura, the Court must also consider the same to extend the benefit to the Petitioner/Respondent regard being had to the provisions of Article 14 of the Constitution of India.

We do not think that there is any force in the submission made by the learned Counsel for the Respondent inasmuch as Annexure-5 and Annexure-9 produced in Civil Rule 30/90 are there only to show that the Govt. of Tripura was good enough to extend the benefit of treating these persons as on duty since the training they attended, viz., the training in Public Health Nursing course and the Diploma in Public Health Nursing were said to be essential for the post of Nurse services in the Department of Health and Family Planning in the State of Tripura. It is common knowledge that a person working as Nurse must be equipped with the essential training of Nursing course - there is no doubt about it. Therefore, the same analogy cannot be extended to an engineer who has been serving as Executive Engineer in the State of Tripura, who has gone to Calcutta to avail the facility of Post Graduate study in Hygiene and Public Health in the Institute at

Calcutta. We have not been able to appreciate this argument that a qualified Engineer working as Executive Engineer in the Department of Public Health Engineering needs a training in Public Hygiene as essential qualification for him to work effectively as an Engineer in the department in which he is working as Executive Engineer. We fail to understand the efficacy of this submission.

10. Viewed from all these circumstances, we are clearly of the view that the view taken by the learned Single Judge in allowing the writ petition solely based upon an earlier precedent, i.e., Civil Rule No. 2/87, is wholly incorrect and erroneous, and cannot be sustained in the eye of law. Over and above this opinion, it is necessary to mention here that in paragraph 15 of the counter presented on behalf of the State opposing the writ petition, it was clearly mentioned:

In this connection it is stated that the Petitioner once availed of study leave for 24 months as admitted by him while he completed the Post-Graduate course in Radio Therapy in 1981-82. According to Leave Rules, study leave for more than 24 months cannot be granted to a Government employee during his entire service period. As a result granting of study leave to the Petitioner for the second time for study in Post-Graduate course in General Surgery does not arise. He is, therefore, required to take usual leave as admissible under Leave Rules for his study period.

11. In view of the specific stand taken by the State of Tripura, it was incumbent on the writ Court to have considered this aspect of the matter, which the learned Single Judge did not consider in the instant case. We are sure, had he considered this aspect of the matter, perhaps, the writ petition would not have been allowed. This is an added circumstance in favour of the Appellants.

12. In the result, the appeal is allowed. The order of the learned Single Judge in Civil Rule No. 30/90 passed on 30.7.93, stands set aside.

Parties to bear their own costs.