

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

JAIPUR BENCH, JAIPUR

ORDER

1. SB Civil Writ Petition No. 4415/2010

Smt Suman Kumari Vs State of Rajasthan & anr

2.SB Civil Writ Petition No. 4420/2010

Sunita Hada Vs State of Rajasthan & anr

3.SB Civil Writ Petition No.4422/2010

Smt Jogindra Kaur Vs State of Rajasthan & anr

4.SB Civil Writ Petition No. 444424/2010

Gayatri Gupta Vs State of Rajasthan & anr

5.SB Civil Writ Petition No.4438/2010

Pushpa Sharma Vs State of Rajasthan & anr

6.SB Civil Writ Petition No. 4442/2010

Sunita Tanwar Vs State of Rajasthan & anr

7.SB Civil Writ Petition No. 3847/2010

Smt Nirmala Choudhary Vs State of Rajasthan & ors

8.SB Civil Writ Petition No. 10591/2011

Usha KV Vs State of Rajasthan & anr

9.SB Civil Writ Petition No. 5918/2010

Sampat Lal Kharer Vs State of Rajasthan & anr

10.SB Civil Writ Petition No. 7727/2010

Vinod Kanwar Vs State of Rajasthan & anr

11.SB Civil Writ Petition No. 10197/2011

Anita Sharma Vs State of Rajasthan & anr

12.SB Civil Writ Petition No. 7729/2010

Hukum Barupal Vs State of Rajasthan & anr

13.SB Civil Writ Petition No. 7735/2010

Chandra Kala Vs State of Rajasthan & anr

14.SB Civil Writ Petition No. 7736/2010

Manju Bala Vs State of Rajasthan & anr

15.SB Civil Writ Petition No. 7733/2010

Krishna Rani Vs State of Rajasthan & anr

16.SB Civil Writ Petition No.2386/2009

Mohammad Shaheed Vs State of Rajasthan & anr

30.8.2011

HON'BLE MR. JUSTICE MN BHANDARI

Mr Ankur Rastogi

Mr Anil Upman

Mr Dilip Mudgal - for the petitioners

Dr Vibhuti Bhushan Sharma, Addl GC – for respondents

BY THE COURT:

Since on same set of facts, similar relief has been prayed in all these writ petitions, with the consent of the parties, they have been heard together and decided by this common order.

Petitioners were appointed on the post of ANM. While they were working on the aforesaid post, advertisement was published for seeking application for training in General Nursing & Midwifery (for short 'GNM'). Petitioners applied therefor and were accordingly selected to undertake training of GNM. Petitioners applied for study leave, which was allowed to them.

Grievance of the petitioners is that they are not paid salary of the period of training though doctors, taking leave for higher studies/ training so as the ANM/ GNM taking basic nursing course are being paid salary for the period of training/ study leave. The discrimination aforesaid was pointed out to the respondents and, thereupon, aforesaid issue was decided by the Division Bench of this court in the case of “DS Nathawat Versus The Rajasthan Civil Services Appellate Tribunal & ors”, DB Special Appeal No.1468/2006, on 3.3.2008. The period of three years of GNM course was held to be on deputation and petitioner-appellant was allowed all consequential benefits. This was looking to the discrimination in the action of the respondents as similar benefits were being allowed to the doctors who undertake post graduate course. The judgment in the case of DS Nathawat (supra) was challenged by the State Government before the Hon'ble Apex Court, however, SLP therein was dismissed thereby the judgment

in the case of DS Nathawat (supra) was confirmed.

Petitioners are also holding the post of ANM and are undergoing course of GNM but being deprived to get salary of the training period. The prayer is accordingly to decide these writ petitions in view of the judgment in the case of DS Nathawat (supra) for extending similar benefits to the petitioners also.

Learned counsel for respondents submits that the controversy regarding entitlement of deputation allowance has been settled by this court in the case of “Jitendra Kumar Bhargav & ors Versus State of Rajasthan & ors”, SB Civil Writ Petition No. 3856/2008, decided on 12.8.2010 at Principal Seat, Jodhpur. Therein, it was held that the General Nursing Training Course Rules, 1990 does not permit benefit of deputation thus for undertaking GNM course, one cannot be allowed benefit as claimed herein. This was in reference to rule 9 of the Rules of 1990 relating to GNM course.

It is further stated that the controversy in regard to application of rule 97 read with rule 112 of the Rajasthan Service Rules, 1951 (for short the “RSR”) was considered by the Supreme Court in the case of “State of Rajasthan Versus Sushil Sharma”, SLP (C) No. 6037/1999, Civil Appeal No.6283/2001, therein, it

was held that one cannot be allowed benefits contrary to rule 112 read with rule 97 of the RSR. Looking to the aforesaid, petitioner was denied benefit of deputation allowance for the period of training.

Learned counsel for respondents is, however, fair enough to state that similar benefit is being allowed to the doctors for higher studies and GNM for undertaking basic Nursing course. The respondents denied benefit of deputation allowance to the GNM undertaking basic nursing course after the year 2010, however, they have been extended such benefits till 31.12.2011 i.e. those who have already taken admission in basic nursing course would be allowed deputation allowance. Even the doctors have been allowed similar benefit during the course of study leave. Accordingly, the Division Bench judgment in the case of DS Nathawat (supra) was limited to the petitioner therein only, however, it is prayed that in future nobody would be allowed deputation allowance for the period of study/ training, rather, their cases would be governed by rule 112 read with rule 97 of the RSR.

I have considered submissions of learned counsel for parties and find that in the Medical & Health Department there exist various posts like Medical Officer, GNM, ANM, Lab Technician, Ward Boy etc who are allowed to undertake higher

studies while in service. They all are governed by same set of rules of RSR for the purpose of study leave. But there exists discrimination in the action of the respondents, inasmuch as doctors are allowed full salary during the course of study, whereas, others have been denied the same benefit. The only excuse taken by the respondents is that there is shortage of candidates on the post of Junior Specialist, hence, to give incentive to the in-service Medical Officers to get promotion on the post of Junior Specialist, full salary is provided for study of post graduate course.

The argument aforesaid cannot be accepted firstly for the reason that any action of the respondents against the statutory provisions has to be rendered illegal even if there exist any justification for providing such benefits. It is settled law that benefit cannot be allowed contrary to the statutory provisions. This is more so when the Hon'ble Apex Court also expected from the respondents that they will not allow any benefit in violation of the rules either by circumventing or otherwise. The aforesaid was given while deciding the SLP in the case of Sushil Sharma (*supra*). The relevant portion of the said judgment is quoted thus -

“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 situate 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 for 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 nor 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 rules are not circumvented or violated as seem to have been done in cases other than those of the respondents."

From the para quoted above, it comes out that respondents are not following the rules or circumventing it. It is accepted by learned counsel for respondents that benefit of full salary is being given to the doctors and others during the course of study. The aforesaid arrangement cannot be appreciated being in violation of statutory rules and the observations made by the

Hon'ble Apex Court in the case of Sushil Sharma (supra).

In the background aforesaid, I have even considered judgment of this court in the case of Jitendra Kumar Bhargava (supra). Therein, rule 9 of General Nursing Training Course Rules of 1990 has been taken note of. It is, no doubt, true that rule 9 prohibits deputation for the purpose of training but one should not lose sight of the fact that period of study leave was treated as deputation in view of un-amended provision of Rajasthan Service Rules, 1951. The original provision of rule 112 was amended in the year 1979. The un-amended provision was providing period of study leave to be treated as deputation but the amended provision does not make a mention of the word 'deputation' as it would become clear from perusal of rule 112 of the RSR which is quoted thus -

“112. Condition for grant of Study leave. — (I) 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 exceptional 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).”

Perusal of rule 112 quoted above reveals that one is entitled for half salary for a period of leave whereas before amendment the study leave period was to be treated as deputation making a person entitled for full salary. It seems that the aforesaid

aspect was not brought to the notice of this court while arguing the case of Jitendra Kumar Bhargava (supra). The judgment aforesaid was rendered based on earlier judgment in the case of “Smt Sunni John & anr Versus State of Rajasthan & ors, SB Civil Writ Petition No. 6186/2008, decided on 21.10.2009 at the Principal Seat, Jodhpur. The period of study leave used to be named as 'deputation' in reference to un-amended provision of RSR but after amendment in rule 112 of RSR it does not make a mention of the word 'deputation' for study leave. Hence, rule 9 of the Rules of 1990 for GNM training course loose significance for grant of benefit of study leave period. The confusion exist even in the mind of the respondents as they also called the period of study leave as 'deputation' though the word 'deputation' as was existing under original rule 112 stands repealed with the amendment in the year 1979.

Looking to the aforesaid facts and circumstances, the respondents are required to be given following directions to avoid any discrimination between the employees of one department as also illegality in their action in future.

Looking to the aforesaid, these writ petitions are being disposed of with the following directions -

1. Respondents are directed to comply with the observations and expectations of the Hon'ble Apex Court as given in the case of Sushil Sharma (supra), thereby, they will not allow benefit of deputation allowance to an one in violation of rule 112 read with rule 97 of the RSR. This is irrespective of the categories of the post in the respondent department;

2. If there is shortage of Junior Specialist, endeavour should be to amend the Rules so that direct recruitment can be made, as presently aforesaid post is filled up by promotion only. However, on the pretext of shortage of Junior Specialist, respondents cannot be allowed to violate or circumvent the rules. This is more so when it goes even against the observations and expectations of the Hon'ble Apex Court in the case of Sushil Sharma (supra). The respondents will accordingly allow study leave and benefit thereupon as per rule 111 and 112 read with rule 97 of the RSR;

3. Since, for many posts, benefit of study leave with full salary has been allowed, hence, to avoid discrimination, respondents have agreed to extend similar benefit to the petitioners also, however, arrangement aforesaid would be limited to those who have already joined the training course of GNM and, now, onwards, nobody would be allowed study leave benefit in violation of the provisions of RSR;

4. Compliance of the aforesaid order may be made within a period of one month from the date of receipt of copy of this order.

(MN BHANDARI), J.

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All corrections made in the judgment/ order have been incorporated in the judgment/ order being emailed.

(BN Sharma)
PS-cum-JW