

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) NO.712 OF 2021**

Dr. Debajit Debnath

..... **Petitioner(s)**

Vs.

The State of Tripura and ors.

.....**Respondent(s)**

For the Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate.
Mr. S. Bhattacharjee, Advocate.
Mr. D. Paul, Advocate.

For the Respondent(s) : Mr. M. Debbarma, Advocate.

Date of hearing and delivery of
Judgment & Order : 14.12.2023.

Whether fit for reporting : YES/NO.

**HON'BLE MR JUSTICE T. AMARNATH GOUD
JUDGMENT AND ORDER(ORAL)**

Heard Mr. P. Roy Barman, learned Sr. counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the petitioner as well as Mr. M. Debbarma, learned Addl. G.A. appearing State respondents.

2. The brief fact of the case is that the petitioner is a Medical Officer serving under Govt. of Tripura. He joined the service on 23.10.2013. The Director of Health Officer, vide Memo dated 06.12.2017 issued "*No objection*" certificate to the petitioner and other officers working under the Health and Family Welfare Department, Govt. of Tripura to enable them to appear in PG Entrance Examination to be held in different states for prosecuting

higher study in MD/MS courses during the session 2017-2018 subject to condition that, in the event of selection, they will take admissible/extraordinary leave and also execute a bond in prescribed form for taking admission in respective PG course. In the said memo, the name of the petitioner appeared at serial No.5, and no objection was issued. Thereafter, the petitioner appeared at the PG entrance examination and he was selected for admission to MS(Obstetrics & Gynecology) at JIPMER Puducherry. Thereafter the petitioner through proper channel represented the matter to the Director of Health Service to State that he has been selected for the said course for the session which will commence from January, 2018. The petitioner also stated in the said representation that the total duration of the course is 3 years and it will commence from 01.01.2018. The petitioner also stated that he needs study leave for 3 years. The petitioner along with the application submitted a duly filled-up application for study leave for 3 years w.e.f. 01.01.2018. Thereafter, the Chief Medical Officer, Belonia South Tripura by forwarding letter dated 19.12.2017, forwarded the application of the petitioner for sanction of study leave. Thereafter, the Director Health Service vide order dated 26.12.2017 released the petitioner w.e.f. 30.12.2017 for the said admission. Vide notification dated 19.01.2018, issued by the Under Secretary to the Govt. of Tripura Health and Family Welfare Department, it was notified that the Governor was pleased to sanction 3(three) years

of Extra-ordinary leave without pay (w.e.f. 01.01.2018 to 31.12.2020) prefixing Govt. Holidays on 31.12.2017 in favour of the petitioner for prosecuting higher studies in PG course in MS(Obstetrics & Gynecology) Jawaharlal Institute of Post Graduate Medical Education and Research, Puducherry during the Session 2017-18. During the period of study, the petitioner was paid regular pay and salary by the respondents. The petitioner successfully passed the said course and JIPMER issued a release order dated 16.04.2021 but due to the outbreak of COVID pandemic, the petitioner could not join his duty and sought sanction of E.L. of 22 days from 17.04.2021 to 08.05.2021. In the meantime, the petitioner got selected for the course of Senior resident of MGMC & RI, Puducherry and he was required to join the said post. The petitioner approached the Director of Family Welfare and Preventive Medicine to allow him to take up the study of Senior Resident Course at MGMC & RI w.e.f. 08.05.2021 to 08.05.2022. SDMO Belonia vide letter dated 10.06.2021 forwarded the same to CMO Belonia for necessary action. But SDMO Belonia issued a letter dated 08.06.2021 to asking the petitioner to refund the pay & allowances which was allegedly wrongfully disbursed to the petitioner during the period of 01.01.2018 to May, 2021. By that letter, the petitioner was asked to refund Rs.25,05,699/- within one month. In response, the petitioner submitted detailed representations dated 07.07.2021 to the SDMO Belonia and

Principal Secretary, Dept. of Health and Under Secretary, Dept of Health and Family Welfare agitating his grievance. The Directorate of Health Services and Ex-Officio Joint Secretary, Govt. of Tripura vide memo dated 13.07.2021 informed the petitioner that his prayer for granting 1(one) year unpaid leave w.e.f.09.05.2021 to 08.05.2022 for senior residency on completion of PG study is not considered and the petitioner was directed to join his original place of posting immediately. Thereafter the petitioner joint his duty on 16th September.

3. Aggrieved by the said action of the respondents, the petitioner has filed this present writ petition under Article 226 of the Constitution of India seeking the following reliefs:-

" i. Issue Rule upon the Respondents to show cause as to why Writ in the nature of mandamus and/or Order or direction shall not be issued whereby directing the respondents to modify the Notification dated 19.01.2018 issued by the Under Secretary to the Govt. of Tripura to the extent that instead of extraordinary leave without pay, it should be read as study leave with pay w.e.f. 01.01.2018 to 31.12.2020.

ii. Quashing and cancelling the letter dated 08.06.2021 issued by the SDMO, Belonia, South Tripura.

iii. Pass and interim order staying the operation of the impugned letter dated 08.06.2021, issued by the SDMO, Belonia, South Tripura, asking the petitioner to refund Rs.25,05,699/- which was disbursed to the petitioner as his pay and allowances during the period of 01.01.2018 to 31.05.2021.

iv. Make the rules absolute.

v. Call for records.

vi. Pass any further order/orders as this Hon'ble High Court considered fit and proper."

4. Mr. P. Roy Barman, learned Sr. counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the petitioner submits that similarly situated Medical officers have been given study leave to undergo study which was in the public interest and

also for increasing the efficiency of the concerned Medical Officers in Govt. duty. The petitioner became a Master of Surgery in Obstetrics and Gynecology. The acquisition of higher degree, skill and expertise by the petitioner will certainly enhance the efficiency of the petitioner in his duty and it would be a definite advantage from the view of the public interest. As such, it is most unreasonable not to grant study leave to the petitioner for such study. The respondents consciously disbursed pay and salary to the petitioner from 01.01.2018 to 31.05.2021 and the petitioner did not induce the respondents by fraud or by any other means to disburse the pay and salary for the said period. The petitioner is under the sponsored category. Further as evident from the Service Experience Certificate dated 24.10.2017, the petitioner has been serving in the Rural ADC area for more than 3(three) years.

5. On the other hand, Mr. M. Debbarma, learned Addl.G.A. appearing for the State-respondents submits that it is not disputed that the petitioner is a sponsored person by the Government, but the extra-ordinary leave was sanctioned '*without pay*'. Wrongfully the monthly salary of 3(three) years was issued by the SDMO. After completion of 3(three) years, the petitioner made an application for another 1(one) year leave and that was not approved. Wrongly the salary was given for the period of 01.01.2018 to 31.12.2020.

6. Heard both sides and perused the evidence on record.

7. On perusal of the notification dated 19th January, 2018, issued by the Under Secretary to the Government of Tripura, it is evident that the 3(three) years of extra-ordinary leave sanctioned to the petitioner from 01.01.2018 to 31.12.2020 was sanctioned '*without pay*'. Hence, this Court is inclined to accept the argument as advanced by the learned Addl.G.A., that the petitioner was sponsored by the Government without pay. The extra-ordinary leave was sanctioned without pay and wrongfully the monthly salary of 3(three) years was issued by the SDMO, Belonia, South Tripura to which the petitioner is legally not entitled to. The petitioner cannot enrich himself by drawing the money to which he is not entitled to.

8. In view of the above findings, the present writ petition is dismissed. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE

suhanjit

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SUHANJIT
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