

GAHC010207492024



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5186/2024

DR. SHAHBAZ HUSSAIN
SON OF ANOWAR HUSSAIN,
RESIDENT OF ABHAYAPURI, NAYAPARA, WARD NO. 4,
PO AND PS- ABHAYAPURI,
IN THE DISTRICT OF BONGAIGAON,
PIN- 783384, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY,
HEALTH AND FAMILY WELFARE (B) DEPARTMENT,
DISPUR, GUWAHATI- 781006, ASSAM.

2:THE JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
HEALTH AND FAMILY WELFARE DEPARTMENT
DISPUR
GUWAHATI- 781006
ASSAM.

3:THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI- 781036.

4:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
SIX- MILE
GUWAHATI- 781022.

5:THE JOINT DIRECTOR OF HEALTH SERVICES
GOLAGHAT
PIN- 985702

Advocate for the Petitioner : MR. M P SARMA, MR A CHETIA,MS. L DAS,MR A CHAKRABORTY

Advocate for the Respondent : SC, HEALTH,

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 21.11.2024

Heard Mr. M.P. Sarma, learned counsel for the petitioner and Mr. D.P. Borah, learned Standing counsel for the respondents in the Health Department.

2. The grievance of the petitioner, being sought to be addressed in this writ petition, is that the petitioner had passed MBBS Examination in December, 2017 from Srimanta Sankardeva University of Health Sciences, Guwahati. Thereafter, he served continuously for a period, more than 5 years w.e.f. 11.03.2019 to 13.08.2023. Thereafter, he applied for NEET-PG, 2024 and secured 77.59% and his rank was 48546, which is a qualifying percentage for admission into PG Courses in Medical Colleges of Assam. The contention of the petitioner is that in order to take admission in PG Courses in Medical Colleges of Assam, he has to submit No Objection Certificate (NOC) from the Government of Assam at the time of admission, on the day of counselling. Then, being qualified in the NEET-PG, 2024, he applied for grant of NOC on 18.09.2024, else he would not be able to avail the benefit of reservation granted under State Health Service Quota. But, the same was not granted to him. However, in respect of some of the similarly placed incumbents, NOC was granted to them on 21.09.2024. But, the case of the petitioner was not considered. Being aggrieved, the petitioner has approached this Court by filing the present petition.

3. The respondent No.2 has filed Affidavit-in-opposition stating that the petitioner had applied for NOC for pursuing Fellowship Program under SSUHS Session 2024-26, was rejected on the grounds of non-compliance with the established procedure for NOC issuance, as outlined in Office Memorandum No. HLA.616/2017/17 dated 12.07.2017. It is stated that the Rule 14.2.(iv) of the Leave Rules, 1934 stipulates that 'Except in the case of an officer in permanent employ the duration of extraordinary leave on any one occasion shall not exceed the following limits (i) 3 (three months); (ii)...(iii).... (iv) 24 (twenty four) months where the leaves is required for the purposes of prosecuting studies certified to be in the public interest, provided the Government Servant concerned has completed three years' continuous service on the date of expiry of leave of the kind due and admissible under the rules including three months extraordinary leave under (i) above.' It is also stated that the petitioner was selected by APSC and posted as Medical & Health Officer-I at Abhayapuri State Dispensary on 06.01.2022, and he joined in the said post only on 11.01.2022. As he could not fulfil the aforesaid criteria of three years continuous service as stipulated in the Leave Rules, hence the application of the petitioner for grant of NOC has been rejected.

4. The petitioner has filed reply to the affidavit-in opposition filed by the respondent No.2. It is stated that the respondent No. 2 while rejecting issuance of NOC, vide letter dated 25.10.2024, had taken into consideration the provision contained in Rule 14.2.(iv) of the Leave Rules, 1934 and had misconstrued the said provisions. It is also stated that the petitioner is a permanent employee in

terms of Rule 3(vii) of the Leave Rules, 1934 and the same stands fortified from the fact that under the said provision, extraordinary leave of only 24 months (2 years) is permissible whereas the NEET-PG course for Post- Graduate Degree is of 36 months (3 years) duration. It is also stated that upon a conjoint reading of the aforesaid provisions, it becomes clear that for availing extraordinary leave under the said provision, the concerned government servant must complete 3 years continuous service on the date of expiry of leave. The said period of 3 years will essentially include 24 months (2 years) of extraordinary leave in conformity to Rule 3(viii) of the Leave Rules, 1934, meaning thereby, the petitioner had to complete only 1 year service without break for availing leave under Rule 14.2.(iv) of the Leave Rules, 1934. It is also stated that he had completed more than 5 years of continuous service w.e.f, 11.03.2019 till date, but the respondent No. 2 had counted the period of service of the petitioner w.e.f 11.01.2022 till date and stated that the petitioner had not completed three years continuous service. If the petitioner is in any manner required to avail benefit of Rule 14.2.(iv) of the Leave Rules, 1934 for pursuing NEET- PG 2024 course then he must have completed only one year service on the date of granting 24 months extra-ordinary leave, which the petitioner had already completed on 10.01.2023.

4.1 It is also stated that during the pendency of this petition, NEET- PG Schedule, 2024 came to be published. In the said schedule, dates beyond 07.01.2025 have been scheduled for 3rd round of counselling, etc. and the petitioner would complete 3 years by then, as required by the respondent No. 2 and if the petitioner is required to wait till then, he would miss opportunity to choose subject of his preference by then and he would be prejudiced if the same is allowed to happen. It is also stated that if the period of three years, as

referred to above, is counted w.e.f 11.01.2022 in the manner as stated above, then the petitioner would fall short of the said period by nearly 20 days only as the commencement of Academic Session for Post graduate course for the year 2024 is fixed to be 20th December, 2024 according to the NEET-PG schedule, and the petitioner will be completing the said three years of continuous service on 10th January, 2025.

4.2 It is also stated that he may not be able to get the same opportunity to get admitted to NEET-PG Course if he is denied NOC. It is also stated that he had secured 77.59 percentile score in NEET- PG 2024 and that he is in 4th position in terms of merit if benefits are given under State Health Service Quota and his carrier would be adversely affected if he is not allowed to pursue NEET-PG Course 2024. As such, the shortfall of 20 days may be relaxed in a compassionate manner, thereby allowing the petitioner to pursue NEET-PG 2024 Course. It is also stated that he being an MBBS graduate and he is eager to improve his knowledge and skills by pursuing post graduation through NEET-PG 2024 and the same would be in the interest of the public at large as well as the petitioner and there is shortage of specialist Doctors in the Government Hospitals and the petitioner is highly motivated to contribute to the work force of the state health care.

5. Mr. Sarma, learned counsel for the petitioner submits that the petitioner has been serving continuously for more than 5 years in the State of Assam, though he has not completed three years continuous service under the Government of Assam, but, he has served in Assam under the National Health Mission (NHM), and that he is entitled to extraordinary leave and the same can be granted without allowance when no other leave is admissible or when other leave is

admissible, but the official concerned applies in writing for the grant of extraordinary leave. Mr. Sarma also refers to Rule 4 of the Assam Study Leave Rules, 1963, which provides that the maximum period of study leave that can be granted is 24 months and sub-rule 4(i) of Rule 3 provides that study leave should not ordinarily be granted to a Government servant who has rendered less than 5 years of service under the State Government. Mr. Sarma further submits that the petitioner has rendered more than 5 years service and as such, he may be granted NOC and the study leave to enable him to pursue PG Courses.

6. On the other hand, Mr. Borah, learned Standing counsel for the respondents in the Health Department has opposed the petition. Mr. Borah submits that though the petitioner has rendered 5 years service in Assam, the same is not under Government of Assam and under the Government of Assam, he has rendered service less than 2 years and as such, study leave cannot be granted to him to pursue PG Courses and therefore, Mr. Borah has contended to dismiss the petition.

7. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the Leave Rules, 1934 and the Assam Study Leave Rules, 1963.

8. It is not in dispute that the petitioner has acquired the requisite qualification for taking admission into PG Courses in the Medical Colleges of Assam. It is also not in dispute that he has been working under the Government of Assam for more than five years. Having been qualified in NEET P.G. Examination, he had applied for NOC from the respondent authorities. But, the

same was denied. The ground for denial is that he has not completed 3 years of continuous service under the Government of Assam. But, it is not in dispute that he has been rendering service for more than 5 years in Assam, though for some of the period he was under the NHM. Only because he has not served for 3 years under the Government of Assam and on such count, denial of NOC to him, to the considered opinion of this Court, is too technical and the same is arbitrary and irrational, in as much as, after completion of the course, he will render service under the Government of Assam. It is the categorical contention of the petitioner that being an MBBS graduate, he is eager to improve his knowledge and skills by pursuing post graduation and the same would be in the interest of the public at large as well as his own interest, and while there is shortage of specialist Doctors in the Government Hospitals, he is highly motivated to contribute to the work force of the state health care.

9. It also appears that Rule 14.2(iv) of the Leave Rules, 1934, provides that 24 months of study leave is required for the purpose of prosecuting studies certified to be in the public interest, provided the Government servant concerned has completed 3 years continuous service on the date of expiry of leave of the kind due and admissible under the rules including 3 months extraordinary leave under Rule 14.2(i). Moreover, if the period of three years, is counted w.e.f. 11.01.2022, in the manner discussed herein above, then he would fall short of the said period by nearly 20 days only, since the commencement of Academic Session for Post Graduate Course for the year 2024 is fixed to be started from 20th December, 2024 according to the NEET-PG Counselling Schedule, and he will be completing the said three years of continuous service on 10th January, 2025.

10. It is also stated that he may not be able to get the same opportunity to get admitted to NEET-PG Course if he is denied NOC for such admission to NEET-PG 2024 Course. He wish to improve his knowledge and skills by pursuing post graduation through NEET-PG 2024. And it is not in dispute that his knowledge and skill will benefit the public at large. It is not in dispute also that there is shortage of specialist Doctors in the Government Hospitals.

11. It is to be noted here that Article 51 A (j) of the Constitution of India provides that – 'It shall be the duty of every citizen of India-- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. It is judicially recognized that that fundamental duties are equally important as fundamental rights. Though fundamental duties are not enforceable like fundamental rights they cannot be overlooked as duties in Part IV A of the Constitution of India. (See- **AIIMS Students Union vs. AIIMS (2022) 1 SCC 428**). In the case of **Shri Rangnath Mishra vs. Union of India (2003) 7 SCC 133**, Hon'ble Supreme Court has held that fundamental duties should not only be enforced by legal sanctions but also by social sanctions. In the case of **Kesavananda Bharati vs. State of Kerela**, reported in **(1973) 4 SCC 225**, Hon'ble Supreme Court has adopted the view that the Fundamental Rights and Directive Principles being complementary to each other, each supplementing the other's role in aiming at the same goal of establishing a welfare state by means of social revolution.

12. In the given factual background and in the light of submission of learned Advocates of both sides, and also considering the relevant rules, and the spirit

of Article 51 A (j) of the Constitution of India, this Court is of the view that the petitioner has to be allowed to pursue Post Graduate Course in the Medical Colleges of Assam.

13. Accordingly, this petition stands allowed. By a mandamus of this Court, the respondent No.2 is directed to issue NOC to the petitioner and also to allow him to participate in the counselling process and further to grant the kind of leave as per his entitlement, which of course subject to outcome of his successful counselling process.

14. In terms of above, the writ petition stands disposed of.

15. Interim order, passed earlier stands merged with final order.

16. The parties have to bear their own cost.

JUDGE

Comparing Assistant