

* HON'BLE SRI JUSTICE R.KANTHA RAO

+ Writ Petition No.18755 of 2015

% 16-11-2015

Dr. D.Balachandra Reddy

... Petitioner

Vs.

\$ The State of A.P., Rep. by its Prl. Secretary,
Public Health and Family Welfare Dept.,
Hyderabad; and 2 others

... Respondents

! Counsel for the Petitioner: Sri K.Ramamohan-Mahadeva

Counsel for Respondents 1&2: Government Pleader for
Medical & Health

Counsel for Respondent No.3: Sri G.Anandam,
Standing Counsel

< Gist:

> Head Note:

? Case referred:

1. 2002(2) ALD 96 (DB)

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Writ Petition No.18755 of 2015

Between

Dr. D.Balachandra Reddy

... Petitioner

and

The State of A.P.,
Reps. by its Prl. Secretary,
Public Health & Family Welfare Dept.,
Hyderabad; and 2 others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 16-11-2015

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgment? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.18755 of 2015

Order:

This writ petition is filed to direct the

3rd respondent-Nizam's Institute of Medical Sciences (NIMS), Hyderabad (respondent No.3) to pay the stipend to the petitioner for M.Ch. (Plastic Surgery) Super Speciality course from 01-8-2014 to 31-7-2017 as per Condition No.G(2) and to further declare that the condition "*The candidates those who are in service will not be paid stipend*" as illegal, arbitrary and violative of Article 21 of the Constitution of India.

2. The facts that led to filing the present writ petition are as follows:

(a) The petitioner completed M.B.B.S. course in the year 2007. He was appointed as a Civil Assistant Surgeon by the Government and was posted at Primary Health Centre, Nallacheruvu, Ananthapur district in the State of Andhra Pradesh. He was selected for the Post Graduate course M.S. (General Surgery) at Sri Venkateswara Medical College, Tirupathi as in-service candidate. The 2nd respondent relieved him from service and permitted him to prosecute the Post Graduate course.

(b) Subsequently, in 2014, the 3rd respondent issued notification inviting applications for Super Speciality courses. The 3rd respondent also issued a Prospectus at the time of submitting the applications for admission into Super Speciality courses (D.M./M.Ch.

courses).

(c) Condition No.XI(1) of the Prospectus states as follows:

“Stipend as fixed by the institute shall be paid to all such students who are regular in attendance and attend to their duties to the satisfaction of the controlling authorities. The total period during which the students are paid stipend shall not exceed 36 months for post graduate super speciality courses. No candidate will be eligible to draw the stipend for more than 36 months during his/her entire study period.”

Whereas, Condition No.XI(2) of the Prospectus states that,

“The candidates those who are in-service will not be paid stipend.”

(d) It is submitted by the petitioner that he was selected through a regular process by merit. He joined M.Ch. (Plastic Surgery) on 01-8-2014 by applying for the leave on “loss of pay” to pursue the said course. The 1st respondent sanctioned extraordinary leave (study leave) vide G.O.Rt.No.139, Health, Medical and Family Welfare (B-1) Department, dated 12-3-2015, without pay and allowances and on his own cost with effect from 01-8-2014 to 31-7-2017.

(e) The petitioner challenges Condition No.XI(2) of the Prospectus which lays down that the candidates those who are in service will not be paid stipend as illegal, arbitrary and violative of Article 21 of the Constitution of India. He seeks to set aside the said condition in the writ

petition and to issue a direction in the nature of *mandamus* to the respondents to pay the stipend to him. The basis of his contention is that as he is not receiving any salary or stipend from any other source during the course of his residency and as he was not allowed to do any private practice, denying stipend to him is illegal and it violates Article 21 of the Constitution of India. He obtained a Non Drawal Certificate dated 10-4-2015 from the 2nd respondent and he submitted it to the 3rd respondent on 15-4-2015. He submits that the Government issued G.O.Ms.No.719, Health, Medical and Family Welfare (E2) Department, dated 16-12-2003 wherein certain amendments were issued to the Andhra Pradesh Medical Colleges (Admission into Post Graduate Medical Courses) Rules, 1977 (the 1977 Rules, for short). The amendment made to Rule 11 of the 1977 Rules is relevant and it reads as follows:

“(xii) Deputation to in-service candidates selected under service quota shall be restricted to 3 years only, i.e., (36 months). The candidate selected to prosecute post graduate courses under in-service quota shall be sanctioned deputation for one course only in his service time. The candidate selected under in service quota shall be permitted to take any course of his/her choice based on merit.”

(f) The petitioner pursued M.S. (General Surgery) at Sri Venkateswara Medical College, Tirupathi, Chittoor district as an in-service candidate and pursued his services with permission of the Government and had

drawn his salary from his parent department as per the aforementioned rules. Thus, he availed the in-service benefit for the post-graduation course.

(g) The petitioner made representations to the 3rd respondent on 16-4-2015 and 13-6-2015 requesting to release the stipend because he has to meet his family expenses and further he was not permitted to work anywhere during the said period. The 3rd respondent has not released his stipend. He further submitted that the 3rd respondent orally stated to him that he was not eligible for stipend in view of Condition No.XI(2) in the Prospectus. According to the petitioner, Clause G(2) states that the institute offers stipend to the students who do not receive any funding to support their residency. Stipendiary residents should not be receiving salary from any other source and also as he was not permitted to do any private practice, he is entitled to receive the stipend from the 3rd respondent.

(h) On the aforementioned grounds, he filed the present writ petition challenging Condition No.XI(2) of the Prospectus.

3. The 3rd respondent filed counter affidavit contending as under:

(a) The petitioner accepted the terms and conditions of the Prospectus after having understood that he is not entitled for stipend as he being in-service candidate,

joined into the Super Speciality course and has not made any attempt to claim the stipend from the date of joining of the course till the date of filing of the writ petition. Therefore, it is not now open for him to challenge the condition which disallows the petitioner from drawing any stipend as he being in-service candidate. He has already availed the benefit while he prosecuted the first Post Graduate course. The petitioner, in fact, suppressed the said fact while joining into the Super Speciality course. Therefore, considering him to be a non in-service candidate, proceedings have been issued treating that he has not availed the benefit of stipend at the first Post Graduate course but as it is revealed that he received the stipend while prosecuting his first Post Graduate course as in-service candidate, he is not allowed to take the same benefit while prosecuting the Super Speciality course. The petitioner knows pretty well that Rule 11 containing G.O.Ms.No.719, dated 16-12-2003, stipulates that the candidates selected to prosecute the Post Graduate courses under in-service quota shall be sanctioned deputation for one course only in his service time, yet, filed the writ petition claiming stipend for which he is not entitled as he has already claimed while prosecuting the first Post Graduate course.

(b) It is further contended that Condition No.XI(2) of the Prospectus makes it clear that the candidates those who are in service will not be paid stipend. The said

condition is binding on the petitioner as it has the force of law and as such, it is not open to the petitioner to claim any alteration or modification to the Prospectus by this Court in exercise of powers under Article 226 of the Constitution of India. Moreover, the petitioner has been granted study leave by the 1st respondent without pay and allowances and on his own cost with effect from 01-8-2014 to 31-7-2017 and therefore, the petitioner is not entitled to any stipend and he has to prosecute the present course at his own cost without benefit from any corner. The petitioner thus being in-service candidate is not entitled for any stipend in terms of the orders of the Government and also as per the terms and conditions of the Prospectus. It is also contended that the 3rd respondent being funded by the State of Telangana and works under the supervision of the State of Telangana, the writ petition is bad for non-joinder of the State of Telangana, which is a necessary party.

(c) In the proceedings, it is clearly stated that the candidates who are in service may not be paid stipend. The petitioner has applied and appeared for the entrance examination as an in-service candidate of the Government. The petitioner also submitted No-objection Certificate from the Director of Public Health and Family Welfare of Government of Andhra Pradesh, in which it is stated that No-objection issued is subject to sanction of study leave/Post Graduate lien as per the rules in force.

The petitioner got selected for the course of M.Ch. (Plastic Surgery) for the year 2014 vide orders dated 28-7-2014. The terms and conditions of admission are stipulated by the respondent-institute in the said order. The order clearly stated that the classes would commence from 01-8-2014 and stipend will be paid to the non in-service students from the date of joining into the course. The 3rd respondent has thus clearly stated that the eligibility of the candidates to claim stipend shall depend upon the status of the candidates. The petitioner submitted G.O.Rt.No.139, Health, Medical and Family Welfare (B1) Department, dated 12-3-2015, issued by the Government of Andhra Pradesh in which the Government sanctioned him extraordinary leave for study purpose without pay and allowances and on his own cost with effect from 01-8-2014 to 31-7-2017. Based on the said G.O., the Director of Public Health and Family Welfare, Government of Andhra Pradesh instructed the Commissioner, Andhra Pradesh Vaidya Vidhana Parishad, Hyderabad not to draw pay and allowances and make necessary entries in the Service Register of the petitioner.

(d) Therefore, according to the 3rd respondent, it is very clear that the petitioner is not entitled for stipend either from the Government or from the respondent-institution. The petitioner got admission into Post

Graduate course of M.S. as in-service candidate during the year 2011-12 and he completed the said course in the month of June, 2014 and he joined the Government service on 03-7-2014 and worked till 31-7-2014. Later, he joined in NIMS, Hyderabad-respondent No.3 as student in M.Ch. (Plastic Surgery). As per G.O.Ms.No.719, dated 16-12-2003, he is not entitled for any salary or stipend. The Government of Andhra Pradesh has clearly stated in G.O.Rt.No.139, dated

12-3-2015, that he is sanctioned extraordinary leave for study purpose without any pay and allowances and he has to study on his own cost. Therefore, it is submitted that a Government employee shall not be entitled for study leave with pay and allowances for prosecution of Post Graduate course if the employee has already availed the same benefit once in his service earlier.

The petitioner suppressed the study of Post Graduation (M.S. General Surgery) as in-service candidate with pay and allowances. The respondent-institute was under impression that the petitioner has not availed any study leave for Post Graduate courses. The 3rd respondent subsequently realised that the petitioner has availed study leave with pay and allowances, only on verifying the Government Orders.

(e) As regards the other candidates who joined M.Ch. (Plastic Surgery) course along with the petitioner, they have not availed any study leave previously, whereas the

petitioner has studied M.Ch. (General Surgery) at the cost of the Government and the Government had permitted him to study the second Post Graduation at his own cost.

(f) It is further submitted that the Faculty Members of NIMS, who are selected for admission into Super Speciality course at NIMS, shall not be paid any stipend during the course of their study. Similarly, non faculty employees, who are selected for para medical courses and nursing courses, are also not being paid any stipend/salary by the institute. Therefore, it is the version of the 3rd respondent that the in-service candidates of the Government or NIMS shall not be paid any stipend or salary as they have to bear their own cost.

(g) Contending as above, the 3rd respondent sought to dismiss the writ petition.

4. I have heard Sri K.Ramamohan Mahadeva, learned counsel appearing for the petitioner, the learned Government Pleader for Medical Health and Family Welfare for the respondents 1 and 2, and Sri G.Anandam, learned Standing Counsel for NIMS-respondent No.3.

5. It is contended by the learned counsel appearing for the petitioner that since the petitioner is not paid salary by the Government and he was not allowed to do private practice, he is entitled to receive stipend from the 3rd respondent despite the fact that earlier he prosecuted the

Post Graduate course as in-service candidate.

6. On the contrary, it is contended by the learned Government Pleader that the benefit of prosecuting further studies is available to the candidates only once in their service and while prosecuting the Super Speciality course having earlier availed the benefit of studying the Post Graduate course as in-service candidate, the petitioner cannot claim any stipend and he has to study at his own cost even though he was not paid any salary by the Government. In support of his contention, the learned Government Pleader relied on **B.Meenakshi v.**

Government of Andhra Pradesh and others^[1], wherein the Division Bench of this Court held as follows:

“49. A reading of Rule 11 which provides admission rules shows that in the matter of giving stipends and deputation to “in service” candidates, the financial interest of the State have been kept in mind, and no PG candidate shall be given stipend for more than 24/36 months for PG diploma/degree respectively. From this point of view, the impugned rule, cannot be said to be discriminatory, arbitrary or irrational.”

7. In the instant case, it requires to be noticed that the Prospectus clearly stated that the candidates those who are in service will not be paid stipend.

The petitioner clearly understood the Prospectus and applied for extraordinary leave without pay and allowances. The 1st respondent sanctioned extraordinary leave to the petitioner vide G.O.Rt.No.139, dated

12-3-2015, without pay and allowances and on his own cost with effect from 01-8-2014 to 31-7-2017. The said G.O. does not state that the petitioner though was not paid the pay and allowances is entitled for the stipend, but states that it is at the own cost of the petitioner. Thus, a conjoint reading of the above-referred G.Os and the Rules clearly indicates that the petitioner is entitled to prosecute his further studies as an in-service candidate only once in his service. Thereafter, he has to study at his own cost. Condition No.XI(2) of the Prospectus clearly says that the candidates who are in service will not be paid stipend. Therefore, it is not open for the petitioner to contend that as he was not paid any salary and was not allowed to do private practice,

he is entitled for stipend. In the judgment in **B.Meenakshi** (1 *supra*), the Division Bench of this Court observed that,

“57. The rule only says that as a policy, the stipend is given in case of PG diploma for 24 months and in case of degree for 36 months and no further.

If a PG medical doctor wants to go on prosecuting PG studies in one branch after another, there is no prohibition, but he cannot claim extraordinary leave beyond certain period. Therefore, we hold that the impugned GO does not suffer from any arbitrariness.”

8. As a matter of policy, allowing a candidate to prosecute the further studies as in-service candidate or to receive stipend is limited to one course only. The same has been clearly spelt out in Condition No.XI(2) of the Prospectus. The petitioner having gone through

Condition No.XI(2) of the Prospectus, applied for extraordinary leave and the same was granted to him without any pay and allowances and at his own cost. Having fully understood the nature of the leave he was granted, he joined the Super Speciality course. Imposing such restrictions on the expenditure to be incurred by the Government in respect of the study of Post Graduate medical doctor cannot be said to be arbitrary or illegal or violative of Article 21 of the Constitution.

9. I, therefore, see no substance in the contention urged by the petitioner in the present writ petition.

No valid ground is made out to declare Condition No.XI(2) of the Prospectus issued by the 3rd respondent as illegal and to issue direction to the 3rd respondent to pay stipend to the petitioner. The writ petition, therefore, fails and the same is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

R.KANTHA RAO, J.

16th November, 2015.

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Note:-

L.R. Copy to be marked.

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HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.18755 of 2015

16th November, 2015.
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[\[1\]](#) 2002(2) ALD 96 (DB)