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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.616 of 2019**

(Arising out of order dated 08/11/2019 passed in Writ Petition (S) No.7425 of 2018 by the learned Single Judge)

Jitendra Kumar Rohit S/o Late Parmeshwar, Aged About 25 Years, Posted as Multi Purpose Health Worker, at Sub Health Centre, Sendur Sector, Balrampur District - Balrampur - Ramanujganj Chhattisgarh.

---- Appellant**Versus**

1. The State of Chhattisgarh Through Secretary, Department of Health Services, Mantralaya, Capital Complex, Mahanadi Bhawan, New Raipur, District - Raipur Chhattisgarh.
2. The Director, Directorate of Health Services, New Raipur, District - Raipur Chhattisgarh.
3. The Joint Director, Health Services, Division Surguja, Ambikapur District - Surguja (Ambikapur) Chhattisgarh.
4. The Civil Surgeon Cum Chief Hospital Superintendent, Balrampur, District - Balrampur - Ramanujganj Chhattisgarh.
5. Block Medical Officer, Community Health Centre, Balrampur, District - Balrampur - Ramanujganj Chhattisgarh.

---- Respondents

For Appellant	:	Shri A. K. Prasad, Advocate
For State/Respondent	:	Shri Ghanshyam Patel, Govt. Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Parth Prateem Sahu, Judge****09/01/2020**

1. Challenge in this writ appeal is to the order dated 08/11/2019 passed by learned Single Judge in Writ Petition (S) No.7425 of 2018, whereby writ

petition filed by appellant seeking a relief for direction to the respondent/State to grant study leave to him, was dismissed.

2. Facts of the case in nutshell, are that, appellant was appointed as Multi Purpose Health Worker on 24/07/2013 and during the period of his service by taking prior permission from the competent authority, he has appeared in the counselling for study of 'Bachelor of Ayurveda Medicine and Surgery Course' (hereinafter called as "BAMS Course"). Pursuant to the counselling undergone by him, he has been selected for the course of BAMS, thereafter, he has moved an application before the respondent authority for grant of study leave to pursue the course of BAMS. Pending application for grant of leave, he took admission with Chhattisgarh Ayurveda Medical College, Manki, G.E. Road, Rajnandgaon, Chhattisgarh. The application preferred by the appellant before the competent authority for study leave was rejected, this made the appellant to file writ petition with following reliefs :-

“10.1 That, this Hon'ble Court may kindly be pleased to call for entire records pertaining to the case of the petitioner.

10.2 That this Hon'ble Court may kindly be pleased to set-aside/quash the impugned order dated 24.09.2018 (Annexure P/1) and directed the respondents to grant permission for study leave in B.A.M.S curriculum, in the interest of justice.

10.3 That, any other relief/order which may deem fit and just in the facts and circumstances of the case including award of the cost of the petition may be given.”

3. Learned Single Judge while considering the facts and grounds mentioned in the writ petition as well as arguments advanced by learned counsel appearing for respective parties, dismissed the writ petition by observing

that appellant was selected for the course of BAMS in the year 2017 and study leave having not been granted at that point of time, as on today the same cannot be granted as the clock cannot be set back in motion as the year 2017 has already been passed.

4. Shri A.K. Prasad, learned counsel appearing for the appellant submits that admission of appellant is still alive with Chhattisgarh Ayurveda Medical College, Manki, G.E. Road, Rajnandgaon, Chhattisgarh for BAMS course and the College has sent a letter to him for appearing and attending the class. That appellant has filed an application claiming that the leave should be granted without pay. He further submits that as he is working on the post of Multi Purpose Health Worker, therefore, course of BAMS will also enhance his efficiency in doing his job.
5. Per contra, Shri Ghanshyam Patel, learned Government Advocate appearing for the State/respondent submits that there is no requirement of such a graduation course for the post, on which, appellant is appointed. He further submits that the appellant was appointed on the basis of Higher Secondary School Examination and it is for the State to consider the application and decide the same, to which, the State has already dismissed. He also submits that the course, which has been started in the year 2017 for which appellant has taken admission in the month of October 2017, therefore, after lapse of more than two years, no purpose would be served for granting study leave as sought for by the appellant.
6. We have heard learned counsel appearing for the parties and considered the documents as well as Chhattisgarh Civil Services (Leave) Rules, 1977 (hereinafter referred to as "Rules of 1977").

7. The grant of study leave is prescribed under the Rules of 1977. Rule 42 deals with study leave. To better understand the conditions in which study leave can be granted, it will be proper to extract Rule 42 of the Rules of 1977 :-

“42. Conditions for grant of study leave.-(1)

Subject to the conditions specified in these rules, study leave may be granted to a Government servant with due regard to the exigencies of public service to enable him to undergo, in or out of India, a special course of study consisting of higher studies or specialised training in a professional or a technical subject having a direct and close connection with the sphere of his duty.

(2) Study leave may also be granted:-

(i) for a course of training or study tour in which a Government servant may not attend a regular academic or semi-academic course if the course of training or the study tour is certified to be of definite advantage to Government from the point of view of public interest and is relate to the sphere of duties of Government servant; and

(ii) for the purpose of study connected with the framework or background of public administration, subject to the conditions that-

(a) the particular study or study tour should be approved by the authority competent to sanction study leave; and

(b) the Government servant should be required to submit on his return, a full report of the work done by him while on study leave.

(iii) for the studies which may not be closely or directly connected with the work of the

Government servant, but which are capable of widening his mind in a manner likely to improve his abilities as a civil servant and to equip him better to collaborate with those employed in other branches of the public service.

(3) Study leave shall not be granted unless:-

- (i) It is certified by the Administrative department that the proposed course of study or training shall be of definite advantage from the point of view of public interest;
- (ii) It is for prosecution of studies in subjects other than academic or literary subjects; and
- (iii) the Economic Affairs Department of the Government of India, Ministry of Finance agree to the release of foreign exchange involved in the grant of study leave, if such leave is out of India.

(4) Study leave shall not ordinarily be granted to a Government servant-

- (i) who has not been registered in Government service,
- (ii) who has rendered less than 5 years service under Government; including service in adhoc capacity,
- (iii) who is due to retire or has the option to retire from the Government service within three years on the date on which he is expected to return to duty after the expiry of the leave.

(5) Study leave shall not be granted to Government servant with such frequency as to remove him from contact with his regular work or

to cause cadre difficulties owing to the absence on leave.”

8. Rule 42(1) of Rules of 1977 talks about the discretion on a Government to grant or reject application for study leave as word 'may' is used in the provision. Second part of sub-section (1), it is for the Government to consider whether the course is having close connection with the sphere of duty of the appellant.
9. Application of the appellant was rejected by respondent No.2 recording that he is not feeling to be within rule.
10. The study leave cannot be asked for by any State Government employee as a matter of right, but it is for the State Government to consider the nature of work and nature of course or training, which the concerned Government employee wanted to undergo after taking the study leave. So far as the post, on which, appellant is appointed i.e. Multi Purpose Health Worker recruitment is only based on the Higher Secondary School Examination and BAMS course will not be an additional course or training to enhance the efficiency of the appellant. He is not in a job of dealing with Ayurveda medicines.
11. The other aspect of the case is that the appellant was entered in the Government service only on the basis of Higher Secondary School Examination, whereas the course, he wanted to pursue after taking study leave, is a Bachelor course i.e. BAMS course and there may be every likelihood that it may be for the purpose of improvement of his career. Appellant can also left the present job and will make efforts for better job looking to the qualification, which he wanted to take by pursuing the BAMS

course. The query was made by higher officials also as to whether after undergoing the course/study whether the appellant will continue with the same post vide letter dated 14/03/2018 and copy of the said letter was also marked to appellant but appellant has not filed any document pursuant to the above letter nor has made any statement to this effect in his pleadings.

- 12.** Looking to the aforementioned facts emerging from the record and pleadings of appellant himself, it may not be beneficial in the interest of the State Government to grant and sanction the study leave as sought for by the appellant because the course of BAMS is a course of 4 years and one post will be kept occupied and post will remain vacant during the period of studies i.e. at least for 4 years.
- 13.** Perusal of the Rule 42 itself, it has been made explicitly clear that it is for the Government to decide whether the leave is to be granted to the appellant or not considering the exigency of public service. Sub-rule (3) of Rule 42 provides that the study leave shall not be granted unless it is certified by the Administrative Department that the proposed course of study or training shall be of definite advantage from the point of view of public interest. No such certificate is available on record.
- 14.** Sub-rule (4)(ii) of Rule 42 of Rules of 1977 specifically provides that the study leave shall not ordinarily be granted to an employee, who has rendered less than 5 years service under Government, including service in adhoc capacity.

- 15.** Admittedly, as per the pleadings made by appellant in his appeal, it is apparent that appellant has joined Government Service on 24/07/2013, whereas he has made an application for grant of leave on 26/10/2017. Perusal of both the dates would reveal that appellant has only completed 4 years of service on the said post, therefore, under the Rules of 1977, also he is not entitled to file an application for grant of study leave.
- 16.** In view of above, the appellant failed to demonstrate that any of his right is infringed requiring issuance of writ to the respondents to protect the vested right of the appellant and further even the appellant do not fulfill the criteria of minimum length of service as Government Servant to exercise the discretion in his favour.
- 17.** Taking into consideration overall aspect of the case at hand in the light of Rules of 1977, in the opinion of this Court, appellant failed to make out a case calling interference with the order impugned.
- 18.** The appeal being devoid of merit, is liable to be and is hereby dismissed.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge