

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(210)

CWP-8045-2020

Date of Decision : 24.09.2020

ANITA DEVI

....Petitioner

Versus

STATE OF HARYANA AND OTHERS

.....Respondents

(through video conferencing)

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Sajjan Singh, Advocate for the petitioner.

Ms. Rajni Gupta, Additional Advocate General, Haryana.

Harsimran Singh Sethi, J. (Oral)

1. Present petition has been filed by the petitioner challenging the order dated 10/24.12.2019 (Annexure P-4) whereby the petitioner has been declined the benefit of study leave for pursuing the higher education i.e. M.Sc. Nursing on the ground that petitioner is not eligible for the same.

2. Learned counsel for the petitioner states that petitioner had applied for the grant of study leave for pursuing M.Sc. Nursing for the session 2018-2019 and after due consideration, petitioner was granted the said permission vide order dated 07.03.2019/28.03.2019 (Annexure P-2). Learned counsel for the petitioner further states that the petitioner could not avail the benefit of study leave as the Course in question had already started by the time the permission was granted to the petitioner.

3. Learned counsel for the petitioner states that the petitioner again applied for the grant of NOC for pursuing M.Sc. Nursing for the

session 2019-2020. After receiving the application of the petitioner, the said request was declined by the respondents by passing an order dated 10/24.12.2019 (Annexure P-4) on the ground that petitioner is not eligible for the grant of study leave under the rules governing the service. The said decision of the respondents declining the petitioner the permission to pursue higher studies is under challenge in the present writ petition.

4. Upon notice of motion, respondents have filed a short reply. In the reply, the respondents have taken the stand that though the petitioner was granted the permission to undergo M.Sc. Nursing for the Session 2018-2019 but the said permission was inadvertently granted as the same was contrary to the Rules governing the service. As per the respondents, the grant of study leave is governed by the Haryana Civil Services (Leave) Rules, 2016 (hereinafter referred to as '2016 Rules') and as per Rule 50 (3) of the 2016 Rules, an employee has to clear three conditions to become eligible for the grant of study leave. As per the respondents, the petitioner does not fulfill one of three conditions laid down in Rule 50(3) of '2016 Rules' and, therefore, the said benefit has been declined to the petitioner.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. Learned counsel for the petitioner does not dispute that the grant of study leave is governed by Rule 50(3) of 2016 Rules. The said Rule is reproduced hereunder for the ready reference:-

“50. (3) Study leave shall not ordinarily be granted to a Government employee who -

(i) has rendered less than five years service on regular basis under the Government ; [] 1

(ii) does not hold a gazetted post under the Government;

[and] 2

(iii) is due to retire or has the option to retire from the Government service within five years of the date on which he is expected to return to duty after the expiry of the leave.”

7. Learned counsel for the petitioner concedes that one of the condition i.e. Rule 50(3)(ii) of 2016 Rules is that an employee, who is seeking the study leave, has to hold a gazetted post under the Government, but the petitioner does not hold a gazetted post. That being so, it is an admitted position that the petitioner does not fulfill the conditions laid down under the Rules governing the service for the grant of study leave, hence, claim of the petitioner in the writ petition is contrary to the rules governing the service and cannot be accepted.

8. Learned counsel for the petitioner argues that once the petitioner was granted the study leave for the year 2018-2019, the same benefit could not have been declined by the respondents when the same request was made for the session 2019-2020. This argument of the learned counsel for the petitioner cannot be accepted. The grant of benefit of study leave is to be governed by the Rules. If inadvertently, and that too contrary to the service rules governing on the said aspect, a permission was granted to the petitioner on an earlier occasion, the same will not vest a right in the petitioner to claim the said benefit despite being impermissible under the Rules governing the service. The Rules are to govern the grant of benefit not a particular act of the department, which act of the department was admittedly contrary to the Rules governing the service on the said aspect. The respondents have already stated that the permission, which was granted to the petitioner for undergoing higher studies for the session 2018-2019, was inadvertent and was contrary to the 2016 Rules. No direction can be

issued by this Court to the respondents to grant the petitioner a benefit, which according to the rules governing the service is impermissible so far as petitioner is concerned.

9. That being so, the earlier permission granted to the petitioner for undergoing the higher studies, will not confer a right upon the petitioner to claim the same even for the subsequent year, despite being impermissible under the 2016 Rules.

10. Learned counsel for the petitioner submitted that the petitioner has already deposited the fees for the course and, therefore, the petitioner be granted the benefit of relaxation as under 2016 Rules the State has power to relax any Rule.

11. The argument whether the relaxation can be claimed by way of a right is to be considered keeping in view the settled principles of law. This principle has already been settled by the Hon'ble Supreme Court of India as well as by this Court more than once. The Hon'ble Supreme Court of India while deciding **Civil Appeal Nos.2250-2252 of 2020** titled as '**Dr. Thingujam Achouba Singh and others Vs. Dr. H. Nabachandra Singh and others etc.**', on 17.04.2020, held that relaxation cannot be claimed as a matter of right. The eligibility criteria will be within the domain of the employer and no candidate can seek the relaxation of the eligibility conditions as a matter of right. The relevant paragraph 14 of the said judgment is as under: -

“14. The High Court has also noticed that the experience for eligibility notified in the advertisement dated 16.08.2016 was not in conformity with the Medical Council of India Regulations. In reply affidavit filed before the High Court, while denying such allegation,

it was pleaded that the qualifications and experience, as notified in the advertisement dated 16.08.2016, was in accordance with the "Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998" (as amended from time to time), framed by the Medical Council of India. It was the specific contention of the respondent authorities that as the RIMS is affiliated to Manipur University, the requirement as prescribed by Medical Council of India for Director of affiliated hospital should be applied. Such plea is not accepted by the High Court on the ground that there is no proper pleading in this regard. A copy of the Regulations titled as, "Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998" (as amended upto 11th March 2017) issued by the Medical Council of India is placed before us. As notified in the said Regulations, the academic qualifications and experience applicable for the post of Director of medical institutions differ from those applicable for the post of Director/Medical Superintendent of affiliated teaching hospital. For the post of Director in a medical institution, apart from the academic qualifications, ten years' experience as Professor/Associate Professor/Reader in a medical college, out of which at least five years should be as Professor in a department, is prescribed. However, for the post of Director/Medical Superintendent of the affiliated teaching hospital the required experience is ten years only. It is the specific case of the respondents that the RIMS is an affiliated teaching hospital. In view of such stand of the respondents it cannot be said that the experience for eligibility notified in the advertisement dated 16.08.2016 is contrary to the Regulations of Medical Council of India. So far as relaxation of upper age limit, as sought by the petitioners in one of the writ petitions is concerned, High Court has directed the competent authority and Executive Council of the Society to consider for providing such relaxation clause. We fail to understand as to how such direction can be given by the High Court for providing a relaxation which is not notified in the advertisement. While it is open for the employer to notify such criteria for relaxation when sufficient candidates are not available, at the same time nobody can claim such relaxation as a matter of right. The eligibility criteria

will be within the domain of the employer and no candidate can seek as a matter of right, to provide relaxation clause.”

12. This Court has also considered whether the relaxation can be claimed as a matter of right or not. A Division Bench of this Court while deciding **CWP No.17999 of 2004** tilted as '**Mahinder Pal Gupta Vs. Punjab State Electricity Board and another**', on 24.05.2007, held that the relaxation of qualification is a concession and cannot be claimed as a matter of right. The relevant paragraph 3 of the judgment is as under: -

“3. After hearing learned counsel, we are of the considered view that this petition lacks merit and is thus liable to be dismissed. The service conditions of the petitioner are regulated by the Punjab State Electricity Board Service of Engineers (Electrical) Regulations 1965 (for brevity 'the Regulations'). Regulation 2(i)(a) of the Regulations contemplate that the members of Drawing Establishment were not to be considered for promotion as Assistant Engineer (Electrical) without their passing the Departmental Accounts Examination (Electrical) prescribed for engineering subordinates. The Regulation 2(i)(a) of the Regulations as reproduced in the written statement reads as under :

"The members of Drawing Establishment (not below the rank of Draftsman) shall also not be considered for promotion as AE/Electrical unless they have passed the DAE/Electrical prescribed for Engineering Subordinates.

The members of Drawing Establishment(not below the rank of Draftsman) shall also not be considered for promotion as AE/Civil unless, they passed the DAE prescribed for Engineering Subordinates (Civil)"

A perusal of the aforesaid Regulation shows that passing of Departmental Accounts Examination is mandatory. The use of word 'shall' ordinarily must be read as must. It is equally well settled that even if there is regulation providing for relaxation of qualification

then such a concession of relaxation cannot be claimed as a matter of right. In that regard reliance may be placed on ***Rajlakshmia v. State of Mysore, AIR 1967 SC 993***. The afore-mentioned view has been followed by a Division Bench of this Court in the case of ***A.K. Kapur v. Punjab State Tubewell Corporation (CWP No. 18539 of 1997 decided on 6.8.1997)***. There is thus no merit in the petition.

For the reasons afore-mentioned, this petition fails and the same is dismissed.

Petition dismissed.”

13. The same view was reiterated again by this Court while deciding **CWP No.18247 of 2013** titled as '**Ashish Salgotra Vs. State of Punjab and another**', on 18.11.2014 whereby it was held that relaxation not being a matter of right, the denial of the same cannot be questioned or treated to be violative in the matters pertaining to the equal opportunity of employment. The relevant paragraphs 4 and 5 of the judgment are as under:-

“4. A perusal of Annexure P-6 would reveal that the respondents have stated that no candidate of Physiotherapist category has been appointed by giving relaxation in experience. The respondents in their reply largely relied upon the fact that the petitioner did not have the requisite experience and since no relaxation was given to any of the candidates, the petitioner cannot claim the same as a matter of right. Besides, it has been stated that the select list was issued in the year 2011 and the entire process would have a life of one year and thus, the petitioner who approached this Court now, cannot get any benefit.

5. On due consideration of the matter, I am of the view that the petitioner cannot assert as a matter of right that relaxation should be given to him particularly when the power has not been exercised in case of any candidate who have so far been appointed. Relaxation not being a matter of right, its denial cannot be questioned by the petitioner to be violative in matters pertaining to equal opportunity of employment. Indeed, it would have been more appropriate if the respondents would have reflected in their

reasoning the logic of not exercising the issue of relaxation if they had prescribed it in the advertisement. But having not done so in favour of any other candidate, I am of the view that the yardstick of having the educational qualification with experience has been strictly adhered to.”

14. Keeping in view the above, the prayer of the petitioner that respondents be directed to grant her the relaxation of condition i.e. Rule 50(3)(ii) of 2016 Rules, cannot be accepted and the same is accordingly rejected.

15. Further, the relaxation of Rule 50(3)(ii) of 2016 Rules in favour of the petitioner will amount to deletion of the said rule for the reason that as per Rule 50(3)(ii) of 2016 Rules, an employee, in order to become eligible for the grant of said benefit of study leave, has to hold a gazetted post and in case, the said rule is relaxed in favour of the petitioner, the same will have to be relaxed in favour of every employee holding a non-gazetted post. This would amount to Rule 50(3)(ii) of 2016 Rules becoming redundant. Therefore, under these circumstances, the prayer of the petitioner for the grant of relaxation does not have any merit and cannot be accepted and is accordingly rejected.

16. With respect to the assertion of the petitioner that petitioner has deposited the fees for the sessions 2019-2020, hence, she be allowed to undergo the study, the same is also without any merit. It is the petitioner, who has deposited the fees without there being any sanction from the competent authority, to allow her to undertake the higher studies after granting the study leave. That being so, the petitioner has to suffer the consequences herself and the respondents cannot be blamed for the same

and no benefit can be extended to her as she has deposited the fees without approval from the competent authority.

17. If the petitioner has deposited the fees without there being any permission from the competent authority, the petitioner herself is responsible for the said act and has to suffer the consequences. Further, in case the condition of holding a gazetted post is relaxed by the Government in the case of the petitioner, it will imply that the said Clause stands deleted as the Government will be bound to relax the said clause as and when claimed by any other employee.

18. Therefore, this Court is of the view that claiming of the relaxation by the petitioner is not a matter of right and further, the relaxation with regard to Condition No.2 of Rule 50(3) of 2016 Rules will amount to deletion of the said condition, which cannot be permitted.

19. In view of the above, the claim of the petitioner fails and the writ petition is, accordingly, dismissed.

September 24, 2020
kanchan/naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? Yes/No
Whether reportable? Yes/No