

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of decision: 02nd February, 2021

+ W.P.(C) 499/2021, CM No. 1294/2021

DR ROHIT KUMAR

..... Petitioner

Through: Ms. Geeta Luthra, Sr. Adv. with
Mr. Nitin Saluja & Mr. Varun Dewan,
Advs.

versus

LT GOVERNOR OF DELHI & ORS.

..... Respondents

Through: Mrs. Avnish Ahlawat, SC for GNCTD
with Ms. Tania Ahlawat, Mr. Nitesh
Kumar Singh & Ms. Palak Rohmetra,
Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. The present petition has been filed by the petitioner inter-alia seeking a direction against respondent Nos. 1 and 2 to issue the relieving order and grant study leave to him in order to enable him pursue MD/MS Course in Pediatrics from Post Graduate Institute of Medical Education & Research, Chandigarh ('PGI', for short), as the petitioner satisfies the criteria laid down for grant of study leave in the office memorandum dated November 02, 2012 and after taking due permissions from the respondents.

2. It is the case of the petitioner and so contended by Ms. Geeta Luthra, learned Sr. Counsel that the petitioner, after taking

the required permissions from the respondent No.2 applied for the INICET-2020 examination, which he cleared. He secured a rank of 15270 from amongst 80000 candidates, who appeared. That apart, he is a sponsored candidate from the respondent No.2.

3. The petitioner, on being successfully, attended the offline counseling for MD/MS course at PGI, was allotted a seat in MD (Pediatrics) course. The DDU hospital where the petitioner is working even issued the required certificate and NOC to the petitioner. The certificate clearly states that the hospital did not need a substitute for the petitioner. However, after completing due formalities, when the petitioner submitted his study leave as per the Rules, on December 31, 2020, the respondents 1 and 2 deliberately delayed in granting the same to the petitioner. In the meantime, the respondent No.3 i.e PGI extended the last date for accepting the seat allotment to the petitioner till January 18, 2021 with a condition that in case, the petitioner fails to get the study leave by then from the respondent No.2, in that case, it shall cancel the seat and allot the same to some other candidate.

4. It was only on his visit to the secretariat on January 08, 2021 that he came to know that his application has not been forwarded. He was orally informed; that he has not been granted study leave on account of COVID-19. Ms Luthra submitted that denying study leave to the petitioner on account of COVID-19 is untenable since the data released by the respondent No.2 itself reveals the situation of COVID-19 with regard to management of pandemic and availability of beds in Delhi hospitals has improved considerably in the last couple of weeks and recently 326 Doctors have been freshly

recruited as Medical Officers by the Govt. of NCT of Delhi, which is evident from office order dated May 01, 2020. She submitted that the petitioner is a meritorious student and joining the MD/MS course at the most prestigious Institution of the Country, would be in public interest, for the betterment of the institution where he is working.

5. That apart, she submitted that similarly placed Doctors were granted study leave at the time when the number of COVID cases were at the peak and maximum number of beds were assigned for COVID patients in the hospital. She stated that in the DDU hospital, there are twenty (20) beds, which are vacant as of date, so the reasoning given by the respondents 1 and 2 for not granting the study leave due to COVID-19 is clearly an untenable reason. She supports her submission by relying upon the following judgments:-

(i) Dr. J. Samjaison vs. The Dy. Director of Health Services and Ors., W.P.(MD) No. 10275/2020 and W.P.(MD) No. 9153/2020

(ii) Dr. Kamal Jain vs. State of Rajasthan W.P. 5532/2020 dated May 15, 2020 decided on August 28, 2020;

(iii) Professor Udaya Kumar vs. Jawaharlal Nehru University through its Registrar, W.P.(C) 5496/2020 dated September 14, 2020;

(iv) Dr. Anil Prasad Gara vs. State of Bihar and Ors. (1992) 40 (1) BLJR 485;

(v) *Ganesh Prasad Shukla vs. Guru Ghasi Das Central University, MANU/SG/0209/208;*

(vi) *Dr. Puneet Mishra vs. GNCTD, W.P.(C) 4590/2020; Orders dated July 27, 2020 and September 29, 2020.*

She seeks the relief as prayed for by the petitioner in the writ petition.

6. A counter affidavit has been filed by the respondents 1 and 3 and so contended by Ms. Avnish Ahlawat that the government servant is not entitled for study leave as a matter of right. Chapter-VI, Rule 50 of Central Civil Services (Leave) Rules, 1972 deals with grant of study leave to a government servant. As per the said Rule, the study leave may be granted to a government servant with due regard to exigencies of public service. Even though a Medical officer may be granted study leave for prosecuting a course of post graduate study in Medical Science but, in the exigencies of services the Competent Authority may deny the same. She stated that as per Clause 6 of the OM dated November 02, 2012 issued by the Govt. of India for CHS cadre officers, study leave can only be granted to a government servant with due regard to the exigencies of public service. According to her, in the present situation wherein COVID-19 pandemic is spreading throughout the country, the only exigency in public service would be to serve the COVID-19 patients. According to her, the Lt. Governor has taken a considered view that in these times of pandemic COVID-19, we need more medical staff in the field. As some of the Doctors have already proceeded on study leave, it would not be prudent to spare more Doctors. Hence,

the Lt. Governor has desired that the department may kindly be advised to not sanction any more study leave application in view of the requirement of medical staff of COVID-19.

7. She also stated that even after the decision of the Lt. Governor, in pursuance of the direction of this Court in W.P.(C) 5987/2020 in the matter of Dr. Ruchita Ghiloria & Ors. Vs. Lt. Governor of Delhi and Ors, the matter with respect to sanction of study leave of the Doctors was again placed before the Lt. Governor to decide the application for grant of study leave of the petitioners in that case on October 20, 2020 and the Special Secretary (H&FW) submitted that at present country is facing COVID-19 pandemic including Delhi and in the present scenario, it cannot be presumed whether the cases of COVID-19 will settle or not. It was also mentioned that health experts also have an opinion that in the coming months, the cases of COVID-19 may increase along with viral flue. In such an emergency situation, services of each and every medical human resource are valuable and no one could be spared for other matters. Thereafter, on the recommendation of the Principal Secretary (H&FW), the matter was placed before the Lt. Governor that proposals for grant of study leave may not be acceded to at this juncture, which proposal was accepted by the Lt. Governor on October 22, 2020. Accordingly, an order dated October 22, 2020 was issued, wherein the following has been stated:-

“In view of the prevailing situation of COVID-19 in NCT of Delhi and the projections made by Experts about the expected increase in cases of COVID-19 during the period of November-December 2020, it is not feasible, in public

interest to spare the services of GDMOs, to pursue Post Graduation courses. As such, it has been decided that the proposal for grant of study leave to GDMOs cannot be acceded to at this juncture.”

8. She submitted that in the present case, the petitioner requests for study leave from January 15, 2021 to January 14, 2024 for three years to pursue Post Graduate Degree Course in Pediatrics from PGI but in view of the prevailing situation, the request has not been acceded to. Insofar as the submission of Ms. Luthra that similarly placed three Doctors out of eleven Doctors were already given study leave much before October 15, 2020 and that apart few have got study leave as they have been selected in the same hospital in Delhi is concerned, she stated that the cases of COVID-19 pandemic are still reported to various hospital and it cannot be said that the pandemic is over. She relied upon the judgment of the Supreme Court in the case of *State of Punjab & Ors. Vs. Dr. Sanjay Kumar Bansal 2009 (15) SCC 168*, in support of her submission that the leave cannot be availed as a matter of right. According to her, the said case, was also of a Doctor who was refused the leave on the ground that, there was shortage of Doctors and which the Supreme Court held that the matters fall in the category of ‘*administrative exigencies*’ and Courts cannot sit in appeal thereon.

9. In the present case, the decision of the Lt. Governor for no more study leave to the Doctors due to pandemic COVID-19 is an administrative decision in the exigencies of services, therefore the

petitioner cannot be granted study leave. She seeks the dismissal of the writ petition.

10. Having heard the learned counsel for the parties and perused the record, it is a fact that the petitioner while applying for the course in question, had taken the concurrence of the Authorities in the hospital. It is admitted by Ms. Luthra that the grant of study leave is not by the hospital authorities but by the Lt. Governor. No doubt, that as late as October 14, 2020, the respondent had granted permission to the petitioner to sit in INICET-2020 examination. There is also no dispute that the petitioner had cleared the said examination with a good rank. He is also a sponsored candidate from the respondent No.2 and the hospital where the petitioner is working, has also clearly expressed itself that it shall not require any substitute in place of the petitioner. But the fact remains that the decision has been taken by the Competent Authority i.e. Lt. Governor, Govt. of NCT of Delhi based on the prevailing COVID-19 situation in the City that no study leave must be granted. No doubt, the initial order was passed by the Lt. Governor in July, 2020 and thereafter also in certain cases, the study leave has been granted but the fact remains that after October 22, 2020 when the order, which has been reproduced above was passed, no permission has been granted regarding study leave to the Doctors in the Govt. of NCT of Delhi because of the prevailing COVID-19 situation. In fact, I find that the case of the petitioner has been considered by the Competent Authority i.e. Lt. Governor as recently as January 19, 2021 and it was decided, based on the decision dated October 22, 2020, the request of the petitioner cannot be acceded to.

11. The Supreme Court, in the judgment as relied upon by Mrs. Ahlawat in the case of *State of Punjab & Ors. (supra)*, has in paras 3 and 4 held as under:-

“3. We have gone through Annexure P-3. It merely categorizes employees who are entitled to apply for special leave and those who cannot apply for special leave. Such policy does not confer any right on the applicant to obtain special leave. On facts, the question of striking down the Order of Administration does not arise for the simple reason that in the counter the Administration has stated that shortage of doctors is one of reasons for not granting special leave. In our view these are matters which fall in the category of "administrative exigencies" and this Court cannot sit in Appeal thereon. In the circumstances, the High Court had erred in coming to the conclusion that the Management had erred in refusing the application for want of reasons.

4. Even on the case of discrimination it is for the Administration/Management to take into account the contingencies which may arise in the course of administration. The services of an employee may be required in a given case on more emergent basis vis- a-vis other employees. In such cases the services rendered by an employee, his seniority, the nature of work which he is required to do, his responsibilities etc. are required to be taken into account while taking decision on such applications.”

12. From the above, it is clear that the Courts, in exercise of its power of judicial review, cannot sit as an Appellate Authority over the decision taken by the administration / management. Suffice would it be to state, that the decision has been taken, giving due regard to the exigencies, which may arise in the course of administration. I am conscious of the fact that the petitioner being a meritorious candidate, has a legitimate expectation to acquire a higher qualification and advance in his career but at the same time, as an employee working in the Govt. of NCT of Delhi, is bound by the Rules framed by the Government i.e. Rule 50 of the Leave Rules clearly stipulates that the grant of study leave is not a matter of right, as the same shall be granted to the government servant with due regard to the exigencies of public service.

13. Insofar as the judgments relied upon by Ms. Luthra are concerned, in *Dr. J. Samjaison (supra)*, the Madras High Court was concerned with an issue where the resignation of the petitioner, in that case, was not being accepted by the respondent on the ground that he is bound to serve the government in exigencies. The said argument was negated by the Court stating that when the petitioner intends to pursue his medical course, the petitioner therein could not have been stopped from pursuing a higher course. Suffice would it be to state, the case of the petitioner is not a case of resignation. He continues to be the employee of the Govt. of NCT of Delhi and

bound by the rules and the law, which as referred to above are very clear. The judgment is distinguishable on that ground.

14. Similarly, insofar as the judgment in the case of ***Dr. Kamal Jain (supra)*** is concerned, the said order is passed by the High Court of Rajasthan with regard to a Doctor, who wants to pursue a higher course. The ground taken by the respondents in that case was that in the appointment order, there was a condition that Medical Officer will not undergo PG course for one year and therefore, the petitioner should not be allowed. Suffice would it be to state, denial to permit the petitioner from pursuing a medical course is not for COVID-19 reasons, as are the reasons in the present case. Hence, the order is clearly distinguishable.

15. Insofar as the judgment in the case of ***Professor Udaya Kumar (supra)*** is concerned, the same pertain to JNU and for grant of extraordinary leave for pursuing a fellowship. A Coordinate Bench of this Court has allowed the petition by holding that the same was against the provision of the Ordinance of the University. The defence of the respondents regarding 20% ceiling is untenable in law and cannot be sustained and accordingly set aside the order. The case is clearly distinguishable for the reasons weighed with the Authority for denying the study leave to the petitioner in this petition.

16. Similarly, in the cases of ***Dr. Anil Prasad Gara (supra)*** and ***Ganesh Prasad Shukla (supra)***, on which reliance has been placed, the petitioner was denied study leave on the ground of interest of students, financial burden and shortage of faculty. The judgments

are clearly distinguishable on facts and the reasons given by the Lt. Governor in the case in hand.

17. Insofar as the judgment in the case of ***Dr. Puneet Mishra (supra)*** is concerned, the order dated September 29, 2020 was passed before October 22, 2020 and it is the case of the respondents that no further study leave have been granted to any of the Doctors thereafter.

18. That apart, I note that it is the submission of Mrs. Ahlawat that the case of the petitioner is not a solitary case as there are many other Doctors, who have also applied for grant of study leave shall seek similar benefit is appealing.

19. In view of my discussion above, this Court is of the view that in view of the judgment of the Supreme Court in the case of ***State of Punjab & Ors. (supra)*** when the decision has been taken at the highest level in the Government, this Court cannot sit as an Appellate Authority over such a decision. In the facts of this case, I do not see any reason to interfere with the decision of the respondents not to grant study leave to the petitioner. The writ petition is dismissed. No costs.

CM No. 1294/2021

Dismissed as infructuous.

V. KAMESWAR RAO, J

FEBRUARY 02, 2021/ak