

\$~29

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

Date of Decision: 12.02.2021

+ **LPA 52/2021, CM APPL Nos. 4680/2021 (to place on record the additional facts and documents) & 4681/2021 (for ad-interim directions)**

DR. ROHIT KUMAR

..... Appellant

Through: Ms. Geeta Luthra, Senior Advocate
with Mr. Nitin Saluja and Mr. Varun
Dewan, Advocates.

versus

LT. GOVERNOR OF DELHI & ORS.

..... Respondents

Through: Mrs. Avnish Ahlawat, Standing
Counsel for GNCTD (Services) with
Ms. Tania Ahlawat and Mr. Nitesh
Kumar Singh, Advocates.
Mr. Sudarshan Rajan, Mr. Ramesh
Rawat, Mr. Mahesh Kumar, Mr.
Hitain Bajaj and Mr. Rohit Bhardwaj,
Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J. (Oral)

1. The present letters patent appeal has been preferred against the order dated 2nd February, 2021 passed in W.P.(C) 499/2021 [*hereinafter referred to as the 'impugned decision'*], whereby the learned Single Judge while dismissing the writ petition preferred by the Appellant, has declined to interfere with the rejection of Appellant's application for grant of study

leave and relieving orders from the Respondent No. 1 (Hon'ble Lieutenant Governor of Delhi) and 2 (Health & Family Welfare Department, Government of NCT of Delhi), *inter alia* on the ground that the decision has been taken at the highest level in the Government and this Court cannot sit as an Appellate Authority over such decision.

2. Shorn of unnecessary details, the facts relevant for disposal of the present appeal are that the Appellant is working as a 'Medical Officer' with the Department of Emergency and Accidents, Deen Dayal Upadhyay Hospital, New Delhi (which is under Respondent No. 2). On 14th October, 2020, he was granted permission to apply for and appear as a sponsored candidate in the entrance examination 'INI CET 2020-21' for admission to post graduate medical courses of, *inter alia*, Respondent No. 3 (Post Graduate Institute of Medical Education & Research, Chandigarh). He cleared the examination by securing all India ranking of 15270 with 77.186 percentile. Thereafter, pursuant to counselling with Respondent No. 3, he was provisionally selected for the course of MD (Paediatrics) and was requested to join the session from 1st January, 2021. Appellant applied for 'study leave' to pursue the said course from 15th January, 2021 to 14th January, 2023 (three years). The said letter was forwarded and recommended by the HOD (Casualty), Deen Dayal Upadhyay Hospital. However, Appellant's request was declined, based on a circular/order dated 22nd October 2020 issued by Respondent No. 1 to the effect that since number of cases relating to COVID-19 was expected to increase in the month of November-December, 2020, requests for grant of study leave cannot be allowed. Aggrieved with the same, the Appellant preferred a writ petition being W.P.(C) 499/2021 before this Court, seeking directions to Respondent No. 1 and 2 to sanction the study leave and for issuance of a relieving order. The learned Single Judge considered the contentions of the Appellant as well

as the response of the Respondents and dismissed the writ petition *vide* the impugned decision.

3. Aggrieved with the impugned decision, the Appellant has filed the present appeal. Ms. Geeta Luthra, Senior Counsel for the Appellant, submits that the decision of Respondent No. 1 rejecting study leave suffers from arbitrariness, unreasonableness, non-application of mind and is based on conjunctures, which are not borne from the statistics relating to COVID-19 pandemic situation in the State of Delhi. She further submits that earlier, the Government of NCT of Delhi had issued a circular/order dated 9th July, 2020 restricting grant of study leave, but despite that, eleven doctors were permitted to go on study leave in similar circumstances, in a clear departure from the directions contained in the said circular. Therefore, the denial of leave to the Appellant on the basis of the subsequent order dated 22nd October, 2020, which is *pari materia* to the earlier circular, is not justified. It was incumbent upon the State to review its policy decisions in December, 2020, since the projections of the COVID-19 cases for the months of November-December, 2020 did not match with the ground reality. Nevertheless, even when cases were on the rise in the months of April to July, it did not come in the way of the Government to grant study leave to similarly placed aspirants/doctors. The situation was worse back then, but has now vastly improved and this can be gauged from the fact that the numbers of beds occupied by and assigned for COVID patients in the Hospitals have been de-escalated. Respondent No. 1 ought to have taken into account the improved COVID-19 situation in the country prior to taking the impugned decision. She further argues that since the impugned decision of Respondent No. 1 is grossly unreasonable, this Court should exercise its jurisdiction under Article 226 of the Constitution of India. The COVID-19 situation cannot outweigh the opportunity of the Appellant to pursue higher

education. The Appellant has got once in a lifetime opportunity, as Respondent No. 3 institute is amongst the top three institutes in India to pursue post-graduation in medicine. The pass percentage of clearing INI CET Examination and getting a particular course is less than 12%, and since the Appellant has dedicated five years of his life and managed to clear the examination, where more than 80,000 candidates appeared, the Respondent No. 1 should not have denied the request of the Appellant.

4. Ms. Luthra also argues that the Appellant is entitled to a similar treatment as given to other doctors, whose cases were cited before the learned Single Judge. She submits that the findings of the learned Single Judge that no doctor had been granted study leave after 22nd October, 2020, is erroneous. There was no reasonable basis or logic for the learned Single Judge to depart from the judgments rendered in similar circumstances and also by the Madras High Court in the case of ***Dr. Samjaison v. The Deputy Director of Health Services, Paramakudi & Ors.***, MANU/TN/4476/2020. She further emphasises that there is no difference between the order dated 22nd October, 2020 and the circular dated 9th July, 2020 as both were *pari materia* to each other. Thus, if the doctors were allowed to avail study leave despite the circular of 9th July, 2020, the Appellant should also be given similar treatment on the anvil of Article of 14 of the Constitution. Lastly, Ms. Luthra urged that Appellant is desperate to do the course and is even ready to quit his job for the same.

5. Ms. Luthra supported her submissions by placing reliance upon ***Dr. J. Samjaison*** (*supra*); decision of the Rajasthan High Court dated May 15, 2020 in W.P. 5532/2020 titled ***Dr. Kamal Jain v. State of Rajasthan***; and the decision of this court in ***Professor Udaya Kumar v. JNU***, MANU/DE/1714/2020.

6. Mrs. Avnish Ahlawat, Senior Standing Counsel for the Respondents, on the other hand, defends the impugned decision and submits that there is no infirmity therein. She explains that while the request for study leave is ordinarily accepted, however having regard to the health crisis prevailing in Delhi, a decision has been taken in public interest not to spare the services of GDMOs. The Principal Secretary of Respondent No. 2 has observed that in the light of the prevailing situation of COVID-19 in Delhi and the projections made by experts about the increase in infection cases during November and December, 2020, it would not be possible to spare services of GDMOs. It was recommended to the Hon'ble Lt. Governor that proposals for grant of study leave may not be acceded to, at this juncture. This recommendation was accepted on 22nd October, 2020 and the necessary order to that effect was issued. In the light of the aforesaid directives, the request of the Appellant was considered and accordingly rejected. Ms. Ahlawat argues that there has been unprecedented increase in the fresh cases of COVID-19 in the recent past, and the situation is presently uncertain. Besides, study leave is not a matter of absolute right and therefore, the Appellant cannot insist and seek a writ of mandamus to that effect. She refers to Rule 50 of the Central Civil Service (Leave) Rules, 1972, in support of her contentions and relies upon the judgment of the Supreme Court in the case of *State of Punjab & Ors. v. Dr. Sanjay Kumar Bansal*, 2009 (15) SCC 168, on the point that leave cannot be claimed as a matter of right. She also submits that the sanction of NOC to the Appellant only indicated the status of candidate with the hospital, which entitles him the benefit of being a departmental/sponsored candidate. The grant of NOC does not amount to sanction of study leave, as the hospital is not the competent authority to grant the same, thus, the permission granted by the hospital was only to appear in the exam for admission, and not an assurance that study leave will be granted to the Appellant after clearing the exam.

7. We have considered the rival contentions of the parties. The learned Single Judge, after considering the entire gamut of the case, declined to issue the writ of mandamus, having regard to the fact that the decision has been taken by the Competent Authority i.e. the Hon'ble Lt. Governor, Government of NCT of Delhi, based upon the prevailing COVID-19 situation in the city. Further, the learned Single Judge felt that the exercise of power of judicial review cannot be stretched inordinarily as the court cannot sit as an appellate authority over the decision taken by the administration or management. The learned Single Judge had also held that the Appellant is bound by the rules framed by the Government (i.e. Rule 50 of the Leave Rules). Analysing the judgments cited by the Appellant, the Ld. Single Judge distinguished the same on facts. The relevant portion of the impugned decision reads as under:

"10. (...) 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.*

xx ... xx ... xx

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."*

8. The submissions advanced by Ms. Luthra strike a chord of compassion for the Appellant. Indeed, ever since the outbreak of the pandemic, the doctors and other healthcare professionals of the State of Delhi and elsewhere have been at the forefront and have rendered exemplary services in tackling the COVID-19 pandemic. They have braved all risks and earned the title of 'Corona Warriors', and we express our sincere gratitude towards them. We also have no doubt that the Appellant would have fulfilled that role and put his best efforts, making significant contributions in the combat against the deadly coronavirus. However, as a Court, while deciding the present appeal, we cannot be swayed by emotional pleas and have to remind ourselves of the jurisdiction that we exercise while examining the correctness of the impugned decision, and

have to bear in mind the right asserted by the Appellant and the corresponding obligation of the Respondent. The Respondent No. 1 has cited exigencies of public services as a ground to decline the Appellant's request for study leave. This provision of 'exigency of public service' finds mention in Rule 50 of the Central Civil Service (Leave) Rules, 1972, and Clause 6 of OM dated 2nd November, 2012 issued by Government of India for CHS cadre officers. The decision taken by Respondent No. 1, as noted therein, is based on the opinion of experts, who have advised that the number of cases of COVID-19 infections could increase in future. It has also been noted that some of the doctors have already proceeded on study leave and therefore, it would not be prudent to spare more doctors and accordingly the Department has been advised not to sanction any more study leave, in view of the requirement of medical staff for treatment of COVID-19 infection cases. This reasoning, judicially reviewed by the Learned Single Judge, cannot be held to be arbitrary or completely divorced from the reality. Ms. Luthra passionately submits that the COVID-19 situation in our city has improved and that even in hospitals where there is a special provision for treating COVID-19 patients, the beds are presently vacant. The suggestion that the pandemic situation has vastly improved since the issuance of the order/circular dated 22nd October, 2020, appears to be appealing, but not compelling enough for us to direct the respondents to review and reappraise Appellant's request. Firstly, as a court of law, the perception of the counsel based on the information gathered through news reports and other secondary sources cannot be the basis for us to conclude and declare that COVID-19 has indeed receded. The call has to be taken by the Respondents in consultation with the experts in the fields. Secondly, even if we take judicial notice of the improved situation, we can only say that the trend is rather dynamic and it cannot be said with conviction that the cases of COVID-19 have settled down completely.

Whether the number of infections would increase or decline in the coming months, can only be estimated based on trends that emerge from statistics, and are thus only predictions. Although, we would sincerely hope and wish that infections disappear altogether, but the decision in the present appeal cannot be based on that. We cannot look into the crystal globe and predict the future on the basis of the contentions urged by the Appellant and some information which we may gather on our own through newspaper reports. Therefore, the submissions of Ms. Luthra do not persuade us to come to the conclusion that the decision taken by the Lt. Governor is unreasonable or arbitrary. If we interfere in such decisions of the government, which are undoubtedly steeped in public interest and based on information and foresight provided by experts in the field, then tomorrow if the number of cases spike up again, the government cannot be blamed if the hospitals may find themselves understaffed with inadequate manpower at the time of acute need. The same is undoubtedly an undesirable situation which must be avoided. If cases in the coming months rapidly increase and emergent situation re-occurs, the services of each and every medical personnel would be invaluable and therefore such administrative decisions have to be left to the experts and the Government.

9. As regards Ms. Luthra's contentions that the Appellant is entitled to a similar treatment as given to other similarly-situated doctors, we would say that the learned Single Judge has examined all the decisions cited by the Appellant and has found distinguishing features in all such cases. That apart, if some other doctors have been accorded study leave by Respondent No. 1, it does not necessitate that similar requests made by all doctors have to be given similar treatment. The Appellant cannot claim a right of parity for grant of study leave on these administrative orders which are based on considerations of factors and parameters that are case-specific. Therefore,

we do not perceive a violation of Article 14 of the Constitution of India, merely because some doctors have been accorded permission to avail study leave but not the Appellant. Further, the three doctors named by the Appellant were accorded study leave on 30th September, 2020, which was prior to the order dated 20th October, 2020.

10. Though, Ms. Luthra has pointed out certain distinguishing facts in the decision of *State of Punjab & Ors. (supra)* cited by the Respondents, however the same would not entitle the Appellant to the relief as sought for in the present appeal. It has been pointed out that in the above said judgment, the leave was sought for five years as an employee and was not in the nature of 'study leave', and whereas the Appellant here is a doctor seeking grant of study leave and will continue to render the services of a doctor while pursuing the course. It has been argued that the Appellant cannot be equated with a person taking leave for self-employment, particularly when the Government has already given him no objection and permission to appear in the exam. In our view, the grant of no objection as noted above, does not amount to assumption of grant of study leave. Further, the decision of the learned Single Judge does not entirely rest upon the decision in *State of Punjab & Ors. (supra)*. The learned Single Judge has taken into consideration the relevant rules as well as other factors, particularly that the Respondent No. 1 had taken the decision recently and the changing scenario would thus obviously been in his view at the time of taking the decision.

11. Before parting, we would like to add that the jurisprudence with respect to the power of judicial review of administrative orders, while exercising jurisdiction under Article 226 of the Constitution of India is quite well-settled and we need not burden this decision with the law which is no longer *res integra*. [See: *Tata Cellular v. UOI*, (1994) 6 SCC 651;

Reliance Airport Developers v. Airports Authority of India & Ors.; (2006) 10 SCC 1, ***Rajeev Suri v. DDA & Ors.***, MANU/SC/0001/2021]. The same has also been noted by the learned Single Judge. We may only reiterate that we cannot find any infirmity, arbitrariness or unreasonableness or consideration of wholly irrelevant or extraneous reasons in the decision taken by the Respondent No. 1, impugned before us.

12. The submissions of the Appellant, that the chance to pursue post-graduation at PGIMER is once in a lifetime opportunity for the Appellant, may be true, however, that does not transform into an enforceable right to seek issuance of mandamus to the Respondent No. 1 and 2, to accord study leave to the Appellant.

13. The doctrine of promissory estoppel and legitimate expectation, which is also pressed into service by the Appellant, cannot outweigh the statutory rule which enjoins Respondent No. 1 to take a decision, having regard to the exigencies of the services. Holding otherwise would mean that every candidate, as a matter of right, is entitled to study leave, which can never be the intent of the law. This right will have to be relegated to the background, when pitted against public interest that forms the foundation of the impugned decision.

14. In view of the aforesaid, we find no ground to interfere in the present appeal and accordingly the same is dismissed. The pending applications also stand disposed of.

SANJEEV NARULA, J

RAJIV SAHAI ENDLAW, J

FEBRUARY 12, 2021/nd