IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

JUSTICE SUJOY PAUL

ON THE 08th SEPTEMBER, 2023

WRIT PETITION No. 20459 OF 2023

BETWEEN :-

DR. SHEETAL SONI
W/O VIVEK SONI, AGED ADULT, OCCUPATION GOVERNMENT SERVANT, R/O WARD NO.3, NEAR RAM JANKI MANDIR, SOHAGPUR, DISTRICT SHAHDOL (M.P.)

…...PETITIONER

(*BY SHRI SANKALP KOCHAR - ADVOCATE*)

AND

1. **STATE OF MADHYA PRADESH, THOUGH PRINCIPAL SECRETARY, PUBLIC HEALTH AND FAMILY WELFARE, VALLABH BHAWAN, BHOPAL (M.P.)**

2. **BIRSA MUNDA GOVERNMENT MEDICAL COLLEGE, DISTRICT SHAHDOL (M.P.) THROUGH ITS CEO AND DEAN**

3. **DIRECTORATE OF MEDICAL EDUCATION, BHOPAL (M.P.) THROUGH DIRECTOR**

…..RESPONDENTS

(*BY SHRI LALIT JOGLEKAR - GOVERNMENT ADVOCATE*)

This writ petition coming on for admission this day, ***JUSTICE SUJOY PAUL*** *passed the following :-*

O R D E R

The conundrum in the instant case is relating to expectation of the petitioner to get study leave to pursue higher studies on the one hand and exigencies of the department while refusing the leave on the other. The quagmire is how to deal with this situation where a young doctor has a desire to equip herself with higher education and department is expressing its inability to grant her leave because of paucity of the doctors.

2. The petitioner while working as a Demonstrator/Tutor in Physiology Department in Government Medical College, Shahdol preferred an application dated 13.01.2023 (Annexure P/4) before respondent No.2 for allowing her to fill-up the form of NEET PG, 2023. The Department by communication dated 19.01.2023 (Annexure P/5) accorded her permission to submit application for writing the examination of NEET PG, 2023. In this permission letter, it was made clear that permission has not been granted for taking admission in the PG Course.

3. The petitioner appeared in NEET PG, 2023 and obtained a score of 478/800 and rank of 24066. The petitioner then preferred an application dated 17.07.2023 seeking permission to participate in the counseling of NEET PG, 2023. In addition, the petitioner preferred representations dated 19.07.2023 and 20.07.2023 (Annexure P/8) praying for grant of education/study leave for a period of three years as she has completed 05 years of service and eligible for three years of education leave as per Rule 12(1)(6) of **Adarsh Sewa Niyam**

(Niyam). The said Niyam were amended on 22.02.2021 (Annexure P/9). The said application of petitioner was rejected by impugned order dated 31.07.2023 and she it was informed that in view of norms prescribed by National Medical Commission (Commission) and the present shortage of medical teachers, her study leave application cannot be accepted. This order is called in question in this petition filed under Article 226 of Constitution.

<u>Contention of the petitioner</u> :-

4. Shri Sankalp Kochar, learned counsel for the petitioner submits that the impugned order is bad in law because while granting permission dated 19.01.2023 (Annexure P/5) to write the PG Examination, an impression was created that petitioner will be permitted to take admission in PG Course as well. Thus, *legitimate expectation theory* comes into play. In the rejection order, the respondents have not stated that decision is taken in 'public interest'. As per the stand taken in the reply, there are four sanctioned posts of Demonstrator/Tutor, out of which one is lying vacant for want of suitable candidate. If the respondents have not filled-up the said post, the petitioner cannot be made to suffer and cannot be deprived from the fruits of her selection in NEET PG, 2023 and the respondents cannot take benefit of their own wrong in not filling up the vacant post. The deficiency of Demonstrator/Tutor can be taken care of by a person holding a higher post. The impugned order is not fair and reasonable. The department lost sight of the fact that if petitioner avails study leave and is equipped with a higher degree/knowledge, she will serve the

department with better knowledge for a further period of almost three years.

5. To bolster the aforesaid submissions, heavy reliance is placed on the judgment of Supreme Court in **Civil Appeal No.2739 of 2021 (Dr. Rohit Kumar vs. Secretary Office of Lt. Governor of Delhi & Ors.)**. (decided on July 15, 2021) and it is urged that the case of present petitioner is on a better footing because in the case of **Dr. Rohit Kumar** (supra) the study leave was declined during the period of Covid Pandemic considering the policy decision dated 22.10.2020 taken by Government of NCT, Delhi, whereas in the instant case, there exits no such policy. He also placed reliance on the following judgments High Court of Allahabad (Lucknow Bench) passed in *Service Single No. 1337 of 2014*, dated 2.4.2015 **(Mohammad Merajul Haque Vs. State of M.P. and others)**, High Court of Rajasthan passed in *Civil Writ Petition No.9331 of 2020*, dated 23.2.2021 **(Sheikh Mohd. Afzal and Ors. Vs. State of Rajasthan and Ors.)**, High Court of Karnataka at Bengaluru passed in *W.P. No. 44180 of 2014* dated 14.01.2015, **(Kavitha A.R. Vs. Employees State Insurance Corporation)** and High Court of Calcutta passed in *W.P. No.17025 (W) of 2000* decided on 08.08.2001 **(Nisit Ranjan Dey Vs. The Eastern Coalfields Ltd. And Ors.)**

<u>Department's stand</u> :-

6. Shri Lalit Joglekar, learned Government Advocate for the State opposed the prayer and submitted that impugned order dated 31/07/2023 is passed in consonance with the *Niyam*. The decision so taken is in the interest of institution as well as in public interest. In view of paucity of Demonstrator/Tutor, petitioner's study leave

cannot be sanctioned. By placing reliance on the reply, learned Government Advocate urged that if the petitioner is granted study leave for three years, the minimum criteria prescribed by the Commission regarding availability of minimum number of teachers will be violated which may have potential of revocation of permission granted to respondent No.2 Medical College to impart education. Thus, in larger interest of institution and in public interest, such a decision is taken which does not require any interference.

Rejoinder :-

7. Shri Sankalp Kochar, learned counsel for the petitioner urged that although he has filed rejoinder today, he is placing reliance only on the Rules annexed with the rejoinder and not relying on the averments and other documents annexed therewith.

8. Parties confined their arguments to the extent indicated above.

9. I have heard the parties at length and perused the record.

Findings :-

10. Before dealing with rival contentions, it is apposite to refer to the **M.P. Civil Services (Leave) Rules, 1977 (Leave Rules)** relating to grant of leave. Rule 6 thereof reads as under -

> "**6. Right to leave** :-
> (1) **Leave cannot be claimed as of right.**
> (2) When the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Government servant."

The relevant portion of ***Niyam*** reads thus :-

> "(vi) अध्ययन अवकाश – सम्पूर्ण सेवाकाल में 24 माह (एक समय में 11 माह) के अध्ययन अवकाश की पात्रता पूर्ण वेतन तथा महंगाई भत्ता (अन्य भत्ते नहीं) की पात्रता होगी। पात्रता के लिए चिकित्सा शिक्षक की 05 वर्ष का सेवाकाल पूर्ण होने तथा अवकाश के उपरान्त 03 वर्ष से अधिक का समय सेवानिवृत्त हेतु शेष होना आवश्यक होगा।
>
> (2) **अवकाश का अधिकार के रूप में दावा नहीं किया जा सकेगा। अवकाश स्वीकृत करने वाला सक्षम प्राधिकारी लोकहित में अवकाश स्वीकृत अथवा अस्वीकृत करने एवं स्वीकृत अवकाश को रद्द करने का निर्णय ले सकेगा।**
>
> **(Emphasis Supplied)**

<u>Leave as a right</u> :-

11. A conjoint reading of Rule 6 of Leave Rules, 1977 and the *Niyam* makes it clear that leave cannot be claimed as a matter of right. The competent authority has discretion to grant or refuse the leave and even cancel a leave already granted in exigency of service/public interest.

<u>Legitimate expectation</u> :-

12. The points of argument raised by Sankalp Kochar, learned counsel for the petitioner are interwoven. So far applicability of doctrine of *legitimate expectation* is concerned, it is noteworthy that while granting permission on 19.01.2023 (Annexure P/5), the department made it clear that permission so granted is confined to submit application for participating in the examination. The permission was not granted to take admission in the P.G. Course. The department was perhaps expecting that by the time result will be declared, the post might be filled up through recruitment or by any other mode. Thus, permission, in the opinion of this Court was not a permission for taking admission in the P.G. Course.

13. Learned Government Advocate strenuously contended that if study leave is granted to the petitioner, one more post of Demonstrator/Tutor will fall vacant which will disturb the criteria laid down by the Commission and such deficiency may lead to cancellation/revocation of the recognition of the respondent no.2-Medical College. Curiously, Shri Kochar, learned counsel for the petitioner has not rebutted this contention. In other words, it was not the argument of Shri Kochar that such apprehension/fear of the college is without basis or imaginary. Instead, argument of learned counsel for the petitioner is that a doctor holding higher post can take care of the duty of Demonstrator/Tutor.

14. In this factual backdrop, there is no reason to disbelieve the stand of the department that non-grant of study leave to take admission is founded upon the ground that paucity of Demonstrator/Tutor may have drastic result and even the recognition of the Medical College can be at stake. Thus, pivotal question is whether in this backdrop, the principle of legitimate expectation can be pressed into service. The point involved in this case is no more *res integra.* The doctrine of '*legitimate expectation*' is the latest recruit to a long list of concepts fashioned by the Court for review of administrative action. However, as noticed above, the petitioner was never given to understand while granting her permission on 19/01/2023 that it will follow with grant of study leave and permission to take admission. The Apex Court in **(1993) 3 SCC 499 Union of India and others vs. Hindustan Development Corporation and others**, opined as under :

> "33. ……The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise."
>
> **(Emphasis Supplied)**

The *ratio decidendi* of this judgment is consistently followed by Supreme Court. [**See** : **Hira Tikkoo v. Union Territory, Chandigarh, (2004) 6 SCC 765, Bannari Amman Sugars Ltd. v. CTO, (2005) 1 SCC 625, Monnet Ispat & Energy Ltd. v. Union of India, (2012) 11 SCC 1, State of Haryana v. Eros City Developers (P) Ltd., (2016) 12 SCC 265, State of Rajasthan v. Sharwan Kumar Kumawat, 2023 SCC OnLine SC 898** and **Sivanandan C.T. v. High Court of Kerala, 2023 SCC OnLine SC 994.]**

15. Thus, *legitimate expectation theory* cannot be pressed into service in this case. When there is a conflict between personal interest and institutional/public interest, public interest must outweigh the legitimate expectation of a person.

Judicial Review :-

16. In the rejection order dated 31/07/2023 (Annexure P/10) it was made clear in so many words that in view of criteria fixed by the Commission, study leave cannot be granted considering the paucity of teachers. This reason, in my judgment, talks about interest of institution in particular and public interest in general. Thus, merely because the expression 'public interest' is not used in the rejection letter dated 31/07/2023 (Annexure P/10), it cannot be said that the said decision was not taken in institutional/public interest.

17. In this case, *lis* is not regarding examining the reasons and justification for not filling up the vacant post of Demonstrator/Tutor in respondent No.2-Medical College. Thus, it will not be proper to comment on this aspect. The admitted facts make it clear that one post of Demonstrator/Tutor is lying vacant and it was not rebutted that if any further post becomes vacant, the sword of cancellation of recognition will hang on the Medical College. Thus, it cannot be said that respondents are taking benefit of their own wrong. This Court was unable to persuade itself with the line of argument that deficiency of Demonstrator/Tutor can be taken care of by person holding the higher post.

18. Shri Kochar, learned counsel for the petitioner placed heavy reliance on the judgment of Supreme Court in **Dr. Rohit Kumar (supra)**. Para-44 of the said judgment makes it clear that in the peculiar facts and circumstances of that case, the Apex Court exercised its power to do complete justice flowing from Article 142 of the Constitution of India It was poignantly held in para-44 that *this order will not be treated as a precedent*. Thus, petitioner cannot take assistance of the judgment of **Dr. Rohit Kumar (supra).**

19. In **(2002) 8 SCC 158 (State of Punjab v. Rajesh Syal),** the Apex Court has held under :-

> **"9.** Before concluding, we would like to observe, with respect, that by directing that the order which was passed in *V.K. Sharma case* [(2000) 9 SCC 449 : 2001 SCC (Cri) 467] should not be treated as a precedent **implies** that the said order is **otherwise not in**

> **accordance with law** and therefore should not be regarded as a precedent. ….."
>
> **(Emphasis Supplied)**

20. The judgment of **Mohammad Merajul Haque (supra)** does not improve the case of the petitioner because in the said case, the petitioner had sought leave which has been granted by the institution for pursuing the Ph.D. course. The Court opined that if petitioner has pursued his higher studies and completed the Ph.D. course from a prestigious university of the country, he cannot be denied the benefit of study leave with pay merely because in the rules in-vogue there was no provision for grant of any such leave. The case in hand is governed by the Leave Rules and the *Niyam* which gives authority to the respondents to take a decision on the prayer for study leave in institutional / public interest. The rejection of study leave, as held above, can not be held to be against public interest. Likewise, the judgment of **Sheikh Mohd. Afzal and Ors. (supra)** is also based on a different set of rules and relevant portion of those rules were reproduced in para-23 of the judgment. Since the said case was decided based on a different set of rules, this judgment is also of no assistance to the petitioner.

21. The judgment of Karnataka High Court in **Kavitha A.R. (supra)** is also based on a different set of rules. The High Court read PGET Rules with Rule 50 and opined that once names of petitioners were recommended and petitioners were permitted to take the entrance test and consequent admission in respective colleges, it would not be open for the respondents to take the plea of public interest. In the present

case, the permission so granted to the petitioner by communication dated 19.01.2023 (Annexure P/5) in no uncertain terms makes it clear that permission is limited and confined to write the examination and not to take the admission. Thus, this judgment is also distinguishable.

22. Furthermore, the judgment of Calcutta High Court in **Nisit Ranjan Dey (supra)** deals with the aspect of fair treatment. As discussed above, the reason for which petitioner's claim for study leave was declined, cannot be said to be against institutional / public interest or arbitrary or unfair in nature. The petitioner may be right in contending that if she is equipped with higher education, she will be able to serve the department / patients with more efficiency, but it cannot be forgotten that department is not ready to risk its recognition on the cost of higher education of the petitioner. The department, in my view, has taken a plausible view.

23. This is trite that a decision is an authority for which it is decided and not what can logically be deduced therefrom. It is equally settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of decision **[See: (2003) 2 SCC 111 (Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. and Ors.)**]. In the peculiar factual backdrop of this case and in view of the Rules applicable, no fault can be found in the action of respondents.

24. The scope of interference on administrative decisions in exercise of power under Article 226 of the Constitution of India is limited. Another view is possible, is not a ground for interference **[See: (2002) 3 SCC 496 (Haryana Financial Corpn. v. Jagdamba Oil Mills)** and **(2005) 5 SCC 181 (State of NCT of Delhi v. Sanjeev)]**. The Apex

Court gave its stamp of approval to an administrative decision whereby 'special leave' was declined to the petitioner Doctor because of paucity of doctors. In **(2009 15 SCC 168 State of Punjab vs. Dr. Sanjay Kumar Bansal**, the Court held :-

> "**3.** We have gone through Annexure P-3. It merely categorises 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 the 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."
>
> **(Emphasis Supplied)**

25. In view of foregoing analysis, no case is made out for interference. Resultantly and reluctantly, the petition is **dismissed**.

(SUJOY PAUL)
JUDGE

PK