

Dr. Rohit Kumar vs Secretary Office Of Lt. Governor Of ... on 15 July, 2021

Author: Indira Banerjee

Bench: V. Ramasubramanian, Indira Banerjee

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 2739 OF 2021
(ARISING OUT OF SLP (C) NO. 3824 OF 2021)

DR. ROHIT KUMAR

....Appella

versus

SECRETARY OFFICE OF LT. GOVERNOR
OF DELHI & ORS.

....Respondents

JUDGMENT

Indira Banerjee, J.

Leave granted.

2. This appeal has been filed by the Appellant against a final judgment and order dated 12-02-2021 passed by a Division Bench of the Delhi High Court dismissing the appeal, being L.P.A. No.52/2021, of the Appellant against an order dated 02-02-2021 passed by the Single Bench dismissing the writ petition being WP(C) No.499 of 2021 filed by the Appellant.

3. The Appellant, a doctor, who joined service of the Government of National Capital Territory (NCT) of Delhi, on 5th August 2014, is presently posted as Medical Officer of the Emergency and Accidents Department at the Deen Dayal Upadhyay Hospital, New Delhi.

4. The Appellant has duly completed five years of regular and continuous service with the Government of NCT of Delhi and is thus eligible to avail Study Leave to pursue the post graduate course, in accordance with the Directives and Guidelines of the Ministry of Health and Family Welfare, Government of India issued vide O.M.A.12034/0312012-CHS-V dated 2nd November,

2012, the relevant portion whereof, is extracted hereinbelow:

“1. CHS officer who has satisfactory completed period of probation and has rendered not less than five years regular service including the period of probation under the Government and is not due to reach the age of superannuation from Government service within five years from the date on which he is expected to return to duty after the expiry of the leave, is entitled to avail study leave under Rule 50 of CCS (leave) Rule 1072.”

5. On or about 14th October 2020, the Appellant was duly granted permission to apply for and appear at the INICET-2020, a highly competitive examination for admission to the MD/MS courses in some of the premier medical institutions of the country, such as All India Institute of Medical Sciences (AIIMS), New Delhi, the Post Graduate Institute of Medical Education and Research (PGI), Chandigarh, etc.

6. The results of the INICET-2020 were declared on 28th November, 2020. The Appellant successfully cleared the Examination and was, accordingly called by PGI Chandigarh for counselling for admission to the MD/MS course, by a notice dated 24 th December, 2020. The Appellant duly participated in the off-line counselling for the MD/MS course at PGI, Chandigarh on 29 th December, 2020, and was allotted a seat in the MD course in Paediatrics.

7. The authorities of Deen Dayal Upadhyay Hospital duly issued the required ‘No Objection Certificate’ to the Appellant to enable the Appellant to pursue the post graduate course in Paediatrics at PGI, Chandigarh. After completing all the requisite formalities, the Appellant applied to the Respondent No.1 for Study Leave as per the Rules, to enable him to join the MD course in Paediatrics at the PGI, Chandigarh. In the meanwhile, on or about 20th October 2020, a policy decision was taken, not to grant any further Study Leave to the doctors working in the hospitals of the Government of NCT of Delhi, in view of the COVID-19 pandemic.

8. Another Office Order dated 22-10-2020 was issued by the Government of NCT of Delhi, Health and Family Welfare Department (Medical Branch), which is extracted herein below for convenience:

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“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 November-December, 2020, it is not feasible, in public interest to spare the services of GDMOs, to pursue Post Graduation courses. GDMOs cannot be acceded to at this juncture.”

9. By an order dated 22nd January 2021, the Respondent No.1 rejected the application of the Appellant for Study Leave, having regard to the policy decision taken by the Government on 20th October, 2020 and the subsequent order dated 22nd October, 2020. On 31st January, 2020, admission to the post graduate courses in PGI, Chandigarh, for the 2020 session was closed, and the allotment of the Post Graduate seat to the Appellant was cancelled.

10. The Appellant had filed a writ petition in the Delhi High Court challenging the action of the Respondent No. 1 in not granting Study Leave to the Appellant to enable him to join the post graduate course at PGI, Chandigarh. The said writ petition was dismissed by a Single Bench of the High Court, and an appeal therefrom, filed by the Appellant, has been dismissed by the Division Bench of the High Court, by the judgment and order impugned in this appeal.

11. As observed above, even though the Appellant cleared INICET- 2020 and was selected for the post graduate course in PGI, a premier medical institution, he was declined Study Leave by the Respondent No.1 in view of the COVID-19 pandemic and the consequential policy decision adopted on 20th October 2020, not to grant Study Leave to doctors working in Government hospitals in Delhi.

12. Ms. Geeta Luthra appearing on behalf of the Appellant argued that the Appellant had arbitrarily been declined Study Leave whereas many other doctors, similarly circumstanced as the Appellant, had been granted Study Leave to pursue post graduate courses, even after the onset of the COVID-19 pandemic. The Respondent Nos. 1 and 2 have thereby discriminated against the petitioner.

13. Ms. Luthra cited the instances of Dr. Dharmendra Kumar, Dr. Vipul Pandey, Dr. Brijesh Patel, Dr. Avneesh Tripathi, Dr. Punit Mishra who had admittedly been granted Study Leave in July/August/September, when there were a large number of COVID-19 cases in Delhi.

14. Ms. Luthra argued that on 14th October 2020, when the Appellant was granted permission to apply for and appear at the INICET-2020, the number of new COVID-19 cases reported in the preceding 24 hours was 3324. However, in December/January /February, the daily figure of new cases had declined substantially. There could, therefore, be no justification in refusing Study Leave to the Appellant and depriving him of the opportunity to pursue post graduate studies in a premier institution.

15. While it is true that admittedly numerous doctors named in the SLP have been granted Study Leave during the COVID-19 pandemic, when COVID-19 cases were on the rise, those doctors were granted Study Leave before the policy decision of 20th October, 2020 and the order dated 22nd October, 2020 referred to above. Our attention has not been drawn to a single case of grant of Study Leave to a doctor of a hospital under the Government of NCT, after the said policy decision.

16. Ms. Aishwarya Bhati, learned Additional Solicitor General, appearing on behalf of the Respondent No.1 argued that the Respondent No.1 had neither acted arbitrarily, nor discriminated against the Appellant, in turning down the request of the Appellant for Study Leave. The order of the Respondent No.1 in refusing Study Leave to the Appellant had to be taken in view of the Pandemic, with predictions of exponential rise in the number of COVID-19 CASES and the consequential policy decision taken on 20th October, 2020.

17. Ms. Bhati argued that even though there may have been a decline in the number of fresh COVID-19 cases in December/January/February, the policy adopted on 20th October, 2020 and the subsequent order dated 22nd October, 2020 had not been annulled, in view of predictions of the

likelihood of a possible second wave and spurt in COVID-19 cases. The doctors of hospitals run by the Government of NCT, Delhi, could not, therefore, be spared for higher studies.

18. Ms. Bhati also argued that Study Leave could not be claimed as a matter of right and it was open to the Government to refuse any application for Study Leave, if the service of the concerned doctor was required in public interest. She submitted that the Respondent No.1 has acted within the parameters of law and has not committed any wrong in not allowing Study Leave to the Appellant.

19. It may be true, as argued by Ms. Bhati, that no leave can be claimed as a matter of right. The concerned Respondents have apparently acted within the parameters of law in declining Study Leave to the Appellant in the teeth of COVID-19 pandemic, when doctors were urgently required in Government hospitals, to treat COVID-19 patients. The fact that some doctors may have been granted Study Leave after the spread of COVID-19 cases in Delhi, did not debar the Government from taking a policy decision not to grant Study Leave to doctors any further, when exigencies necessitated such a decision.

20. The policy decision is stated to have been prompted by predictions of rise in the number of COVID-19 cases in Delhi. The exponential rise of COVID-19 cases in Delhi in April/May, 2021 with about 25,000 new cases per day and the consequential pressure on hospitals, nursing homes, clinics and other medical establishments justify the apprehension which led to the policy decision of 20th October, 2020. In any case the prudence of and/or justification for the policy decision cannot be examined by the Court in exercise of its extraordinary power of judicial review under Article 226 of the Constitution of India.

21. The policy decision not to grant Study Leave to doctors for a certain length of time, in apprehension of a rise in COVID-19 cases, to ensure the availability of as many doctors, as possible for duty, is neither arbitrary, nor discriminatory, nor violative of Article 14 of the Constitution of India.

22. At the same time, this Court cannot be oblivious to the legitimate expectation of COVID-19 warriors like the Appellant to fair treatment, in conformity with the Service Rules by which they are governed, to enable them to pursue higher education and enhance their educational qualifications. Needless to mention that doctors with higher qualifications and special knowledge in specific areas would be an asset to the medical fraternity, as also to the society.

23. The guidelines and directions of the Ministry of Health and Family Welfare, as contained in the Order being O.M.A. 12034/0312012-CHS-V dated 2nd November, 2012 entitles a Central Health Service Officer who has satisfactorily completed probation and rendered not less than five years of regular service, to avail Study Leave under the CCS (Leave) Rules 1972, provided he is not due to attain the age of retirement within 5 years from the date on which the officer is expected to return to duty, and/or in other words, within five years from the date on which his Study Leave ends.

24. The policy decision taken on 20th October, 2020, not to grant further Study Leave to doctors working in hospitals under the Government of NCT of Delhi in apprehension of rise in COVID cases,

is obviously a temporary one. The policy cannot continue indefinitely irrespective of changes in circumstances. The policy has necessarily to be reviewed from time to time and relaxed and/or modified once there is decrease in the number of COVID-19 cases in the NCT of Delhi.

25. Thankfully, the COVID-19 situation in Delhi is now under control. As on 14th July, 2021, that is, yesterday, there were total number of 688 active COVID-19 cases, of whom about 250 were in home isolation, as per news reports based on bulletins issued by the Health Department of the Government. The number of new cases per day has dropped to less than 100. It is reported that in most hospitals COVID-19 beds are now lying vacant. The application of the Appellant for Study Leave should, therefore, be reconsidered.

26. At the cost of repetition, it is reiterated that the Appellant could not join the Post Graduate Course for no fault of his own, as his services were required in public interest, for the cause of humanity, to save lives. The admission to the Post Graduate Course was closed on 31st January, 2021 and classes commenced soon thereafter. The Appellant continued to render service to the Government of NCT of Delhi, treating patients at the Deen Dayal Upadhyay Hospital. Now that the COVID-19 situation in Delhi is under control, the Government of NCT of Delhi should, as a model employer, make an endeavour to see that the Appellant is not deprived of the fruits of his success in the INICET 2020 and is able to pursue post graduate studies.

27. Mr. Sudarshan Rajan, appearing for PGI Chandigarh, submitted on instructions that candidates who had cleared the INICET 2020 and selected to a post graduate course in PGI joined the January, 2021 session. The students who joined the January 2021 session, which commenced in January, 2021, have completed one semester and are now in the second semester. The admission to the next session, which is due to commence in July, 2021 will be made by conducting the INICET 2021.

28. Mr. Rajan submits that INICET 2021, which was originally scheduled to be held on 16th June, 2021, has been postponed to 22nd July, 2021 on account of the COVID-19 pandemic. One unfilled seat of the MD course in Paediatrics, of the sponsored category, for the January 2021 session, at PGI Chandigarh, which had not been filled up because of the inability of the Appellant to join, has been re- advertised for the July 2021 session and is to be filled up through INICET 2021.

29. Ms. Luthra's submission that the Appellant be admitted in the January 2021 session cannot be accepted, since the classes commenced over six months ago and the students who were admitted to that session, have completed their first semester and entered the second semester. There can be no question of any direction of this Court, to admit the Appellant to the second semester directly, as suggested by Ms. Luthra, when he has not been able to attend a single class of the first semester. The question is, whether the Appellant can be accommodated in the next academic session scheduled to commence in July, 2021. Since one unfilled seat in the Post Graduate Course in Paediatrics at the PGI Chandigarh, has been carried over and re-advertised for the July, 2021 course, no prejudice will be caused to any one, if that vacant seat is re-allotted to the appellant once again. Unless the seat is re-allotted to the Appellant, and the Appellant is granted Study Leave by the Respondent Nos. 1 and 2, he will be irreparably prejudiced.

30. The question of whether a meritorious candidate, denied admission to a medical course, can be accommodated in that course in the following academic year, was considered by a three Judge Bench of this Court in *S. Krishna Sradha vs. The State of Andhra Pradesh and Others*¹. The Court held: -

“29. However, the question is with respect to a student, a meritorious candidate for no fault of his/her has been denied admission illegally and who has pursued his/her legal rights expeditiously and without delay is entitled to any relief of admission more particularly in the courses like MBBS

30. The aforesaid question is required to be considered only to the cases where (i) no fault in attributable to the candidate;(ii) the candidate has pursued her rights and legal remedies expeditiously and without delay; (iii) where there is fault on the part of the authorities and apparent breach of rules and regulations; and (iv) candidate is found to be more meritorious then the last candidate who has been given admission.”

31. In *S. Krishna Sradha (supra)* this Court directed as follows :-

“33. In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS Course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under: (i) That in a case where candidate/student has approached the court at the earliest and without any 25 delay and that the question is with respect to the admission in medical course all the efforts shall be made by the concerned court to dispose of the proceedings by giving priority and at the earliest. (ii) Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed-30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cut off date and 26 under no circumstances, the Court shall order any Admission in the same year beyond 30th October. However, it is observed that such relief can be granted only 1 (2019) SCC Online SC 1609 in exceptional circumstances and in the rarest of rare cases.

In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not

have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled. (iii) In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such 27 candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota. (iv) Grant of the compensation could be an additional remedy but not a substitute for restitutional remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.

(v) It is clarified that the aforesaid directions pertain for Admission in MBBS Course only and we have not dealt with Post Graduate Medical Course.”

32. The judgment in *S. Krishna Sradha* (supra) was rendered in the context of admission to the MBBS Course and not to a post graduate course. However, in *National Medical Commission vs. Mothukuru Sriyah Koumudi and Others*², this Court held:-

“11. As the dispute in *S. Krishna Sradha* (supra) pertained to admission to the undergraduate MBBS Course, this Court held that they have not dealt with the Post Graduate Medical Courses. Mr. Parameshwar argued that there is no 2 (2020) SCC Online SC 992 reason why the logic behind the judgment in *S. Krishna Sradha* (supra) should not be made applicable to Post Graduate Courses. We find force in the said argument of Mr. Parameshwar. This Court was only dealing with the admission to the MBBS Course for which reason directions given in the said judgment were restricted to the MBBS Course. Directions issued in *S. Krishna Sradha* (supra) can be made applicable to admission to Post Graduate Courses as well.”

33. The proposition of law which emerges from the judgments of this Court in *S. Krishna Sradha* (supra) and in *National Medical Commission v. Mothukuru Sriyah Koumudi and Others* (supra) is that in rare and exceptional cases, a meritorious candidate, who has suffered injustice by reason of his/her inability to secure admission in a medical course, whether under-graduate or post-graduate, due to no fault of his/her own, who has taken recourse to law promptly, without delay, might be granted relief of being accommodated in the same post in the next session.

34. Of course, the judgments in *S. Krishna Sradha* (supra) and in *National Medical Commission vs. Mothukuru Sriyah Koumudi and Others* (supra) are clearly distinguishable, in that the concerned

petitioners had wrongfully and illegally been denied admission by disqualifying them. The Appellant on the other hand, cleared INICET- 2020 and was allotted a seat in the post-graduate course in Paediatrics. PGI, Chandigarh had also acceded to the request of the Appellant to extend the last date of admission. Unfortunately the Appellant was refused Study Leave.

35. It is well settled that a judgment is an authority for the issue of law which is raised and decided. What is binding on the courts is what the Supreme Court decides under Article 141 and not what the Supreme Court does under Article 142, in exercise of its power to do complete justice in any cause or matter pending before it.

36. To quote V. Sudhish Pai from Constitutional Supremacy A Revisit:

“Judgments and observations in judgments are not to be read as Euclid’s theorems or as provisions of statute. Judicial utterances/pronouncements are in the setting of the facts of a particular case. To interpret words and provisions of a statute it may become necessary for judges to embark upon lengthy discussions, but such discussion is meant to explain not define. Judges interpret statutes, their words are not to be interpreted as statutes. “

37. All the conditions set forth in paragraph 30 of the judgment in S. Krishna Sradha (supra) quoted above, would not therefore, be verbatim applicable in the distinguishable facts and circumstances of this case, for grant of the rare and extra-ordinary relief of admission to the same course in the next academic year. The broad principles laid down by this Court for admission to the same course in the following session, would have to be followed, to the extent feasible, to advance the cause of justice, but not with pedantic rigidity.

38. In this case, the Appellant has not been able to take admission to the MD Course in Paediatrics, which commenced in January, 2021, in circumstances entirely beyond his control, in spite of being selected for admission after successfully clearing the highly competitive INICET 2020. Unfortunately, the Appellant was not granted Study Leave from the concerned Respondents, for reasons not attributable to him. The Appellant was not at fault. But then PGI, Chandigarh was also not at fault. The Appellant also approached the High Court promptly, well before the admission was closed.

39. Having regard to the circumstances in which the Appellant has been declined Study Leave, it cannot also be said that the Respondent Nos. 1 and 2 have acted beyond the parameters of law. Nevertheless, the Appellant has suffered injustice, because of the denial of Study Leave, in that he has been deprived of the opportunity to pursue higher studies, which many other doctors have availed. It would be unfair to deny the Appellant the opportunity to enjoy the fruits of his efforts even now, when the COVID-19 situation has improved and is in control, only because the Respondents have not committed “ap- parent breach of rules and regulations” in refusing the Appellant Study Leave. This Court cannot fold its arms and remain a mute spectator to the plight of the Appellant. After all, “nothing rankles the heart more than a brooding sense of injustice”.

40. In *S. Krishna Sradha* (supra), the condition of “fault on the part of the authorities and apparent breach of rules and regulations” for grant of the relief of admission to the next session to a candidate wrongly denied admission in an earlier session, is a sequel to and flows from the condition that there should be no fault on the part of that candidate. The Court has elaborated on the condition of “no fault of the candidate” to ensure that relief is not claimed as a matter of right for any lapse or infraction of rules on the part of the candidate by recourse to the plea of the candidate not being at fault. To cite an example, an individual candidate cannot as a matter of right claim relief when for inability to fulfil a condition of admission for reasons such as computer crash at his end, inability to raise funds within time for payment of admission fees, inability to adhere to time schedules by reason of vehicular breakdown, illness, bereavement etc. which may not be within the control of the candidate, as otherwise it would be impossible for educational institutions to complete the admission process, in time, when there are a large number of applicants.

41. In this case, there has not been any lapse on the part of the Appellant. The Appellant could not join the post graduate course in PGI Chandigarh for the January 2021 session for reasons attributable to the Respondent Nos. 1 and 2 though technically, the said Respondents cannot be said to have acted illegally or in breach of rules and regulations, in denying the Appellant Study Leave, in apprehension of rise in COVID-19 cases and the exigency of availability of doctors in full strength, as far as possible.

42. The Appellant, who could not join the post graduate course, due to the denial of Study Leave by the Government pursuant to a legitimate policy decision and in response to the call of duty, cannot now be denied relief on the hyper technical ground that the Respondent Nos. 1 and 2 had not breached any rules or regulations. It would be a travesty of justice to deny relief to the Appellant, when the Appellant had to make a personal sacrifice in the larger public interest, to serve the cause of humanity.

43. Since the seat in the Post Graduate Course in PGI Chandigarh which remained unfilled due to the inability of the Appellant to join has been carried over to the July 2021 session which is yet to commence, and re-advertised, this Court deems it appropriate to direct the PGI, Chandigarh, being the Respondent No. 3 to admit the Appellant to the post graduate course scheduled to commence in July 2021, on the basis of INICET 2020, which he has successfully cleared. The Respondent No. 1 shall re-consider the application of the Appellant for Study Leave, taking into consideration the decline in COVID-19 cases in NCT of Delhi, and take a reasonable decision in favour of the Appellant. Unless there is a substantial rise in COVID-19 cases, the leave application of the Appellant shall not be declined.

44. These directions are being passed in exercise of the power of this Court under Article 142 of the Constitution of India, in the facts and circumstances of this case, having regard to the fact that the Appellant had cleared INICET 2020 held in November 2020 and had been offered admission to PGI, Chandigarh, but could not join as he was not released on Study Leave in view of the serious COVID-19 situation prevailing in NCT of Delhi at the material time, and this order will not be treated as a precedent.

45. The appeal is, disposed of, accordingly. The impugned judgment and order of the Division Bench of the High Court, and judgment and order of the Single Bench of the High Court dated 02.02.2021 are set aside.

..... J.

[INDIRA BANERJEE] J.

[V. RAMASUBRAMANIAN] New Delhi;

July 15, 2021