

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 509 OF 2020

DISTRICT :- BEED

Dr. Nomani Muhammed Mufti Tahair,)
Age: 38 years Occ. : Service as Medical Officer,)
R/o Sub District Hospital at Georai,)
Tq. Georai, Dist. Beed.)

.. **Applicant**

V E R S U S

1. The Secretary,)
Public Health Department,)
G.T. Hospital, B Wing, 10th Floor,)
Complex Building, Mumbai-400001.)
2. The Director,)
Department of Public Health,)
Mantralaya, G.T. Hospital Building,))
10th Floor, "A" Wing, Mumbai-01.)
3. The Deputy Director,)
Public Health, Arogya Sankul,)
Near New Collector Office,)
Latur, Tq. Dist. Latur.)

.. **Respondents**

APPEARANCE : Shri C.V. Dharurkar, learned counsel
for the applicant.

: Shri V.R. Bhumkar, learned Presenting
Officer for the respondent authorities.

CORAM : JUSTICE SHRI P.R.BORA, VICE HAIRMAN

DATE : 14.09.2023.

ORAL - ORDER

1. Heard Shri C.V. Dharurkar, learned counsel for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondent authorities.

2. Aggrieved by the order dated 27.2.2020 passed by respondent no. 1, the applicant has approached this Tribunal and has prayed for setting aside the said order. It is the case of the applicant that he had applied for study leave for pursuing the course of M.D. in Forensic Science during period 2015 to 2018. On request of the applicant the study leave was granted to him and the order in that regard sanctioning study leave was issued on 7.12.2015. It was a common order passed in respect of 04 Medical Officers sanctioning study leave to them. Name of the present applicant is at sr. no. 2 and period of leave sanctioned was 15.7.2015 to 14.7.2016.

3. It is the case of the applicant that after the study leave was sanctioned to him he started pursuing M.D. Forensic Science course at the Government Medical College, Latur. It is the further contention of the applicant that he had also prayed for extension of study leave for further period for completing his P.G. course. However, since the said issue is not involved in the

present matter, I may not make any discussion in that regard. After the applicant completed P.G. course, he resumed in the year 2018 and is presently serving as Medical Officer in the Government.

4. On 27.2.2020 the order came to be passed, whereby the Government has cancelled the study leave earlier sanctioned to the applicant by it vide order dated 7.12.2015 for the period between 15.7.2015 to 14.7.2016 and further direction has been given for recovery of the salary and emolument paid to the applicant during the aforesaid period. Aggrieved by the said order, the applicant has approached this Tribunal.

5. The study leave has been cancelled and consequent recovery has been directed by stating the reason that on the day on which the applicant proceeded on study leave i.e. 15.07.2015, he has completed only 3 years' regular service and since he has not completed 5 years' regular service, in view of Rule 80(5)(a) of the Maharashtra Civil Services (Leave), Rules, 1981 (for short, Rules of 1981) he was not entitled for such study leave.

6. Shri C.V. Dharurkar, learned counsel appearing for the applicant submitted that the order so passed is unsustainable since it is passed on some wrong interpretation of Rules and considering only the provisions of Rule 80 of Rules of 1981 and by ignoring the other rules. Learned counsel submitted that under rule 80(5)(a) of Rules of 1981 only condition prescribed is that study leave shall not ordinarily be granted to a Government servant, who has rendered less than 05 years' service under the Government. Learned counsel submitted that the applicant was in Government service since year 2005 onwards. Learned counsel submitted that in the said earlier period the applicant used to be given ad-hoc appointments for a particular period and on such orders time to time issued in his favour he continued for couple of years on the same post in the Government services as Ad-hoc appointee. Learned counsel further submitted that the applicant was required to approach this Tribunal by filing Original Application No. 1073/2005, wherein this Tribunal has passed an order thereby directing the respondents that the applicant shall be continued until the M.P.S.C. selected candidate is appointed, or till a regular incumbent is posted in his place. The learned counsel further submitted that though regular appointment

came to be issued in the year 2012, while computing the period of his service, the period of ad-hoc service is liable to be considered and the said total period has to be held as his service period.

7. Learned counsel for the applicant further submitted that since the word 'services' is not qualified with any condition whether on permanent basis or temporary, services rendered by the applicant even as a temporary appointee are liable to be considered. Learned counsel further submitted that the study leave under Rules of 1981 is also liable to be granted to the employees, who are in temporary service of the Government. Learned counsel pointed out that only difference, which has been made in the rules is that the Government employees, who are in temporary service of the Government have to execute bond in some different form. Learned counsel submitted that thus it is not the case that Government servant, who is not in permanent employment, cannot be granted study leave.

8. Learned counsel further submitted that as there was some confusion about salary and stipend to be received by the applicant in the relevant period, in the year 2017 itself the applicant had written to the competent authority and had

sought guidance in that regard and had also undertaken to refund the amount, if would have been accepted by him wrongly. Learned counsel submitted that leave has been cancelled without giving any notice or opportunity of hearing to the applicant. Learned counsel submits that for the aforesaid reasons and in view of Rules of 1981, which provide grant of study leave even to the Government servant in temporary employment, the impugned order be set aside and quashed.

9. The submissions so made on behalf of the applicant are resisted by the State authorities. Short affidavit is filed by respondent nos. 1 to 3. The same is sworn by the Deputy Director of Health Services, Latur. Respondents have justified the impugned order in their affidavit in reply. It is contended that as per the provisions under M.C.S. (Leave) Rules, 1981 more particularly rule 80(5)(a) thereof the study leave is liable to be granted to the Government servant, who has rendered not less than 05 years' service in the Government. It is further contended that on the date of making application the applicant had completed 03 years' permanent service and as such he was not entitled for grant of study leave. It is further contended that the applicant by misrepresenting the authorities took the benefit of study leave and at the same time also worked at

Government Medical College at Latur and took the salary applicable to his post. It is further stated that the aforesaid facts have been suppressed by the applicant in the present application. It is further contended that, the moment it was noticed that the applicant was not entitled for the study leave under rule 80(5)(a) that the impugned communication was issued and the leave granted earlier was cancelled by the respondents and consequential directions are issued for recovery of amount, which the applicant had illegally received during the said period. Respondents have referred to certain judgments in their affidavit in reply to support their contentions. On the aforesaid grounds, the respondents have prayed for rejection of the O.A.

10. Shri V.R. Bhumkar, learned Presenting Officer in his arguments reiterated the contentions raised in the affidavit in reply filed by the respondents. Learned P.O. submitted that certain facts which the applicant was required to disclose in the O.A. have not been disclosed by him, in other words, suppressed by him and on this ground alone the applicant has to be held not entitled for any relief as prayed in the O.A. Learned P.O. further submitted that had the applicant not made any misleading statement in his application, the order dated

7.12.2015 granting study leave to him perhaps could not have been passed by the respondents. Learned P.O. further submitted that subsequently when said fact was revealed to the respondents necessary actions are initiated against the applicant. Learned P.O. further submitted that the actions, which are initiated against the applicant, are based on the provisions under Rules of 1981 and the applicant has not made out any case making out his entitlement for the study leave under the relevant rules. Learned P.O. submitted that the applicant in the present matter cannot fallback on rule 83 of Rules of 1981 or formalities, which are provided of executing the bond, in this matter to justify the mistake committed by him of suppressing certain facts from the authorities. Learned P.O., in the circumstances, has prayed for dismissal of the application.

11. I have duly considered the submissions advanced on behalf of the applicant and the State authorities. I have also gone through the documents so placed on record. It is not in dispute that the applicant was given appointment on substantive post on 4.7.2012. It is further not in dispute that the applicant sought study leave for pursuing the course of M.D. in Forensic Science from 15.7.2015 onwards for 3 years. It is further not in dispute that vide Government order dated

7.12.2015 study leave for the period of 01 year i.e. during the period between 15.7.2015 to 14.7.2016 was granted. As is revealing from the pleadings in the O.A. and from the arguments advanced by the parties, the applicant completed P.G. course and after completion of the said course resumed the duties at Sub-District Hospital, Georai, Dist. Beed in pursuance of the order dated 31.5.2018 issued by respondent no. 1. Accordingly, on 14.6.2018 the applicant claims to have joined as a Medical Officer Group-A at Sub-District Hospital, Georai. Pleadings further reveal that the applicant had perused his request for study leave for next 02 years. However, there was no written communication in that regard either sanctioning the leave or refusing it. In the present application the applicant has prayed for quashment of the order dated 27.2.2020 and has also prayed for a declaration holding the applicant eligible for study leave for the period between 15.7.2015 and 14.7.2016 and grant of earned leave for the period w.e.f. 15.7.2017 to 14.6.2018. Though the applicant has made all aforesaid prayers the present O.A. is restricted only to the relief claimed for quashment of order dated 27.2.2020.

12. Before adverting to the submissions made on behalf of the parties it would be seen and to reproduce rules which are

relevant for determining the dispute raised in the present matter. Chapter VIII of M.C.S. (Leave) Rules, 1981 deals with aspect of study leave. Rule 80 lays down conditions for grant of study leave. Rule 81 prescribes maximum period of study leave. Rule 82 provides nature of applications for study leave. Rule 83 pertains to sanction of study leave, whereas rule 84 deals with accounting of study leave and combination of study leave with leaves of other kinds. I deem it appropriate to reproduce the relevant rules, which read thus: -

“80. Conditions for grant of study leave. - (1) *Subject to the conditions specified in this chapter, study leave may be granted to a Government servant with due regard to the exigencies of public service to enable him to undergo, in or out of India, a special course of study consisting of higher studies or specialised training in a professional or a technical subject having a direct and close connection with the sphere of his duty.*

(2) *Study leave may also be granted-*

(a) *for a course of training or study tour in which a Govt. servant may not attend a regular academic or semi-academic course if the course of training or the study tour is certified to be of definite advantage to Govt. from the point of view of public interest and is related to sphere of duties of the Govt. servant; and*

(b) *for the purposes of studies connected with the framework or back ground of public administration subject to the conditions that-*

(i) *the particular study or study tour should be approved by the authority competent to grant leave, and*

(ii) *the Govt. servant should be required to submit, on his return, a full report on the work done by him while on study leave;*

(c) *for the studies which may not be closely or directly connected with the work of a Govt. servant, but which are capable of widening his mind in a manner likely to improve his abilities as a civil servant and to equip him better to collaborate with those employed in other branches of the public service.*

(3) *Study leave shall not be granted unless-*

(a) *It is certified by the authority competent to grant leave that the proposed course of study or training shall be of definite advantages from the point of view of public interest;*

(b) *It is for prosecution of studies in subjects other than academic or literary subjects:*

Provided that a Medical Officer may be granted leave for prosecuting a course or post-graduate study in medical sciences, if the Director of Medical Education and Research certifies to the effect that such study shall be valuable in increasing the efficiency of such Medical Officer in the performance of his duties;

(c) *the Department of Economic Affairs of the Ministry of Finance, Government of India agrees to the release of foreign exchange involved in the grant of study leave, if such leave is outside India.*

4. *Study leave out of India shall not be granted for the prosecution of studies in subjects for which adequate facilities exist in India or under any of the schemes administered by the Department Economic Affairs of the Ministry of Finance or by the Ministry of Education, Government of India.*

5. Study leave shall not ordinarily be granted to a Government servant –

a) who has rendered less than five years service under the Government;

b) who is due to retire, or has the option to retire, from the Government service within three years of the date on which he is expected to return duty after the expiry of the leave.;

6. Study-leave shall not be granted to a Government servant with such frequency as to remove him from contact with his regular work or to cause cadre difficulties owing to his absence on leave.

Note:- Application for study shall be considered on merits of each case in consultation, with the General Administration Department and Finance Department.

81. Maximum amount of study leave - The maximum amount of study leave, which may be granted to a Government servant, shall be

a) ordinarily twelve months at any one time, and

b) during his entire service, twenty-four months in all (inclusive of similar kind of leave for study or training under any other rules)

82. Application for study leave - (1) (a) Every application for study leave shall be submitted through proper channel to the authority competent to grant leave.

(b) The course or courses of study contemplated by the Government servant and any examination which he proposes to undergo shall be clearly specified in such application.

(2) Where it is not possible for the Government servant to give full details in his application, or if ,

after leaving India he is to make any change in the programme which has been approved in India, he shall submit the particulars as soon as possible to the Head of the Mission or the authority competent to grant leave, as the case may be and shall not, unless prepared to do so at his own risk, commence the course of study or incur any expenses in connection therewith until he receives the approval of the authority competent to grant the study leave for the course.

83. Sanction of study leave (1) *A report regarding the admissibility of the study leave shall be obtained from the Audit Officer:*

Provided that the study leave, if any, already availed of by the Government servant shall be included in the report.

(2) *Where a Government servant borne permanently on the cadre of one department or establishment is temporarily in another department or establishment, the grant of study leave to him shall be subject to the condition that he is permanently attached is obtained before leave is granted.*

(3) *Where the leave is granted for prosecution of studies abroad, the Head of the Mission concerned shall be informed of the fact by the authority granting the leave.*

Note:- The Head of the Mission shall be contacted by the Government servant for issue of any letters of introduction or for other similar facilities that may be required.

(4)(a) *Every Government servant not in permanent employ who has been granted study leave or extension of such study leave shall be required to execute a bond in Form 7 or Form-8, in Appendix-V as the case may be, before the study leave or extension of such study leave granted to him commences.*

(b) Every Government servant not in permanent employ who has been granted study leave or extension of such study leave shall be required to execute a bond in Form-9 or Form-10, in Appendix as the case may be, before the study leave or extension of such study leave granted to him commences.

(c) The authority competent to grant leave shall send to the Audit Officer a certificate to the effect that the Government servant referred to in clause (a) or clause (b) has executed the requisite bond.

(5) (a) On completion of then course of study, the Government servant shall submit to the authority, which granted him the study leave, the certificates of examinations passed or special courses of study undertaken, indicating the date of commencement and termination of the course with the remarks, if any, of the authority in-charge of the course of study.

(b) If the study is undertaken in a country outside India where there is an Indian Mission, the certificates shall be submitted through the Head of the Mission concerned.

84. Accounting of study leave and combination with leave of other kinds - (1) Study leave shall not be debited against the leave account of the Government servant.

(2) Study leave may be combined with other kinds of leave, but in no case shall the grant of this leave in combination with leave, other than extraordinary leave, involve a total absence of more than twenty eight months from the regular duties of the Government servant.

Explanation:- The limit of twenty eight month of absence prescribed in this sub-rule includes the period of vacation.

(3) A Government servant granted study leave in combination with any other kind of leave may, if he so desires, undertake or commence a course of study during any other kind of leave and subject to other conditions laid down in rule 87 being satisfied, draw study allowance in respect thereof:

Provided that the period of such leave coinciding with the course of study shall not count as study leave.”

13. Study leave was granted to the applicant for the period between 15.7.2015 and 14.7.2016 vide communication dated 7.12.2015. Perusal of the said communication reveals that the said leave was granted to the applicant under Rule 80(3)(b) r/w rule 81 (a) for the period of 12 months. It is thus evident that the Director of Medical Education and Research had certified to the effect that the Post-Graduation by the applicant shall be valuable in increasing efficiency of the applicant in the performance of the duties.

14. It is the matter of record that the applicant successfully completed his post-graduation and thereafter resumed the Government services on 14.6.2018 as a Medical Officer, Group-A at Sub-District Hospital, Georai. Around two years thereafter i.e. on 27.2.2020 a memorandum came to be issued by respondent No. 1, whereby the memorandum dated 7.12.2015 by which the applicant was sanctioned the study

leave for the period from 15.7.2015 to 14.7.2016, came to be cancelled and the further directions also came to be issued directing recovery of the salary paid to the applicant during the said period. As is revealing from the order dated 27.2.2020 the study leave which was sanctioned vide memorandum dated 7.12.2015 has been cancelled on the ground that the applicant was not entitled for grant of study leave since he has not completed five years of his regular service. The reference is given of rule 80(5)(a) of the Leave Rules of 1981. Rule 80(5)(a) provides that, “Study leave shall not ordinarily be granted to a Government servant – (a) who has rendered less than 5 years’ service under the Government, (b) -----”

15. According to the respondents, the applicant entered into the Government services as a Medical Officer in the year 2012 and more particularly w.e.f. 4.7.2012 and, as such, when he applied for study leave he had not rendered less than 5 years’ service under the Government. As against it, it is the contention of the applicant that he joined the Government services in the year 2005 and has been continuously working thereafter.

16. It is undisputed that the applicant came to be appointed as the Medical Officer firstly on 20.1.2005 and his services were thereafter continued till the date of his regular appointment vide order dated 4.7.2012. The applicant has placed on record the order dated 20.1.2005. Perusal of the said order reveals that it was issued on the strength of Government Resolution dated 6.11.1978 by the Deputy Director of Health Services, Nashik. The said appointment was for the period of 01 year or till the appointment is made of the candidate selected by the MPSC or by way of promotion or transfer, whichever is less. It is further not in dispute that thereafter time to time the appointments were issued in favour of the applicant every time for the period of 180 days and the applicant continued to discharge his duties on the post of Medical Officer till the date of his regular appointment. It is further not in dispute that the temporary/ad-hoc appointments of the applicant were on the sanctioned vacant post and in the regular pay scale. It is further not in dispute that the applicant was holding the requisite qualification for his appointment on the post of Medical Officer when he was appointed in the year 2005 on ad-hoc basis. Thus, the applicant possessed prescribed

qualification and had worked against the sanctioned post in the period between 2005 and 2012.

17. The Hon'ble Apex Court in the case of **Siraj Ahmad vs. State of Uttar Pradesh and another, 2021(1) SLR 576 (S.C.)**

has held that

“when the person employed possessed the prescribed qualifications and is working against the sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments would be treated as irregular and not illegal.”

The Hon'ble Apex Court has further held that

“If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterrupted till the regularization of his services in accordance with the rules, the period of officiating service will be counted.”

18. In view of the law laid down by the Hon'ble Apex Court in the case of **Siraj Ahmad vs. State of Uttar Pradesh and another** (supra) the services rendered by the applicant from the year 2005 on ad-hoc basis are liable to be considered while counting the period of his service. It is thus evident that when the applicant applied for study leave in the year 2015, he has rendered the services under the Government for the period of more than 05 years. The applicant has thus complied with the criteria for grant study leave under rule 80(5)(a) of the Leave

Rules of 1981 and the study leave was duly granted to him vide the memorandum dated 7.12.2015. Cancellation of the said memorandum vide the impugned order on the ground that the applicant had not rendered the services under the Government for the period not less than 05 years thus cannot be sustained.

19. It further appears to me that even otherwise, the study leave could not have been refused to the applicant on the ground that he was not in the permanent employment of the Government for the period of more than 05 years on the date of making application for study leave. As provided under rule 83(4)(b) of leave rules, 1981 the study leave can be granted even to a Government servant not in the permanent employment. I have already reproduced the aforesaid rule hereinabove. The only distinguishing factor is that such Government employee would be required to execute a bond in form no. 9 or form no. 10 in the appendix as the case may be. As such also the impugned order cannot be sustained and deserves to be set aside.

20. It is further significant to note that the provisions under rule 80(5) does not create a complete bar for grant of study leave to a Government servant, who has rendered less than 05 years' service under the Government. The said sub-

rule provides that study leave shall “**ordinarily**” be granted to a Government servant, who has not rendered less than 05 years’ service under the Government. It is thus evident that in the peculiar circumstances involved in the present matter the respondents could not have cancelled the study leave granted to the applicant on the ground that he did not render the services for not less than 05 years’ as in the permanent employment of the Government. When rule 83(4)(b) provides that the Government servant not in permanent employment is also entitled for sanction of study leave, it appears unjust and unconscionable that the study leave granted to the present applicant has been subsequently cancelled by the respondents on the only ground that he had not rendered the services in the permanent employment of the Government for the period of more than 05 years. The respondents further could not have ignored the fact that the study leave was granted to the applicant under rule 80(3)(b) of the leave rules, 1981 meaning thereby that it was sanctioned on the recommendation of the Director of Medical Education & Research certifying that study shall be valuable in increasing the efficiency of the applicant in the performance of his duties. For all aforesaid reasons the impugned order deserves to be quashed and set aside.

21. One more aspect needs to be discussed, which pertains to the fact that in the period of study leave the applicant has accepted the salary, as well as, stipend, which is impermissible. However, as has been clarified by the learned counsel for the applicant, the aforesaid was not the intentional or deliberate act of the applicant. The documents on record show that in the year 2017 itself the applicant had undertaken to refund the amount, which he was not liable to receive. The applicant shall refund the said amount within the period of 08 weeks from the date of this order. In the result, the following order is passed :-

ORDER

- (i) Order dated 27.2.2020 passed by respondent no. 01 is quashed and set aside.
- (ii) The applicant shall refund the amount which he was not entitled to receive during the period of his study leave within the period of 08 weeks from the date of this order.
- (iii) The Original Application is allowed in the aforesaid terms. There shall be no order as to costs.

VICE CHAIRMAN

PLACE : Aurangabad.
DATE : 14.09.2023.