



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF NOVEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

R

AND

THE HON'BLE MR JUSTICE C M JOSHI

WRIT PETITION NO. 31104 OF 2024 (S-KSAT)

BETWEEN:

1. THE STATE OF KARNATAKA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
HEALTH AND FAMILY WELFARE DEPARTMENT,
VIKASA SOUDHA, BENGALURU – 560 001.
2. THE COMMISSIONER,
HEALTH & FAMILY WELFARE SERVICES,
5TH FLOOR, AROGYA SOUDHA,
MAGADI ROAD, BENGALURU – 560 023.

...PETITIONERS

(BY SMT. SARITHA KULKARNI., AGA)

AND:

1. DR. MADHU KUMAR M H,
S/O HANUMANTHAPPA H.,
AGED ABOUT 37 YEARS,
SPECIALIST (PHYSICIAN)
K.R.HOSPITAL, MYSURU - 570 001.
R/O NO.T-312, C BLOCK,
BLUE BELL APARTMENTS,
VIJAYANAGAR 3RD STAGE,
MYSURU – 570 030.
2. THE DEAN & DIRECTOR,
MYSORE MEDICAL COLLEGE & RESEARCH INSTITUTE,
IRWIN ROAD, DEVARAJA MOHALLA,
YADAVAGIRI, MYSORE – 570 001.





3. THE DIRECTOR/
MEDICAL SUPERINTENDENT,
APPOLLO BGS HOSPITAL,
KUVEMPUNAGARA, MYSORE – 570 023.
4. THE DIRECTOR/
NATIONAL BOARD OF EXAMINATIONS
IN MEDICAL SCIENCES,
MAHATMA GANDHI MARG (RING ROAD),
ANSARI NAGAR, NEW DELHI - 110 029.

...RESPONDENTS

(BY SRI.SHANTHARAJU.,ADVOCATE FOR C/R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE RECORDS PERTAINING TO THE ORDER DATED 09.08.2024 IN A.No-2860/2024 PASSED BY THE KSAT AT BENGALURU (ANNEXURE-A) AND B) ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION FOR QUASHING/SETTING ASIDE THE ORDER DATED 09.08.2024 IN A.No-2860/2024 PASSED BY THE KSAT AT BENGALURU (ANNEXURE-A)

THIS WRIT PETITION, COMING ON FOR ORDERS THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
and
HON'BLE MR JUSTICE C M JOSHI

ORAL ORDER

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

State & its official are knocking at the doors of Writ Court for assailing the Karnataka State Administrative Tribunal's order dated 09.08.2024, whereby, the first respondent's Application No.2860/2024 having been



favoured, a direction has been issued to the first petitioner to consider employee's representation for permission to go on deputation for higher studies, in the light of second petitioner's recommendation in the light of Rules under KCSR Appendix II-A. The Tribunal has prescribed a period of two weeks for accomplishing the mandate.

2. FOUNDATIONAL FACTS OF THE CASE:

(a) First respondent has been working as 'specialist physician' w.e.f. 20.07.2018; he had applied through proper channel for the National Eligibility cum Entrance Test-Super Speciality-2023 conducted by the National Board of Examination in Medical Sciences. He successfully cleared the test. Based on his merit ranking, the Medical Counseling Committee (MCC), DGHS, Ministry of Health and Family Welfare, Government of India, allotted him a seat in DNBSS Cardiology programme. This happens to be a three year Super Speciality course in Medical Science, at Apollo BGS Hospital, Mysore.



(b) The second petitioner i.e., the Commissioner for Health and Family Welfare Services, submitted a proposal to the government to consider his representation for sanction of study leave so that the employee would complete the course and come back after making value addition. This he did vide recommendation dated 3.4.2024 citing the need for undergoing the course inasmuch as there was dearth of doctors in the department with Super Speciality degrees. The said representation having not been considered despite recommendation, the employee moved the Tribunal which granted him the relief as mentioned above. Aggrieved thereby, this petition is filed.

3. Learned AGA appearing for the petitioners vehemently argues that deputation of any kind in general and deputation for educational purpose in particular cannot be claimed as a matter of right; in any circumstance, a civil servant cannot say that even during deputation, he should be paid the salary, though he does not work during the said period; deputation for educational



purpose is permissible only if there is an equivalent post in which 'additionally educated/qualified' civil servant can be accommodated; after making value addition at the cost of public exchequer, if the civil servant quits the public employment and goes in search of greener pasturage, it will be a drain on the public money. She argues that all these aspects having not been properly considered by the Tribunal, its order is liable to be voided. Learned counsel appearing for the private respondents resists the petition making submission in justification of the impugned order and the reasons on which it has been structured. He draws our attention to the Appendix-II-A of KCSR in reply to the submission of learned AGA and seeks dismissal of the petition.

4. Having heard the learned counsel for the parties and having perused the Petition Papers, we decline indulgence in the matter for the following reasons:

(a) It hardly needs to be stated that, ordinarily deputation is a tripartite arrangement involving lending



department, lent to department and deputationist. Deputation for making value addition is made normative by promulgating KCSR Appendix II-A Rules. Rule 1 vests discretion in the government to send its employees on deputation for prosecuting special course of study such as higher studies, specialized training in professional/technical subjects having a direct and close connection with the sphere of his duty; such deputation is made to recognized institution within India. Rule 2 says such value addition should be advantageous to public interest. Rule 3 empowers the concerned departments to drop a programme about the requirements of trained personnel in the specialized field of works. Rule 4 prescribes that the number of deputationists shall not exceed 5% of the sanctioned strength of the cadre. Rule 5 prescribes seniority amongst the employees *inter se* for sending them on deputation 'except for reasons to be recorded in writing'. Rule 6 prescribes that the deputation shall be co-terminus with the duration of the course of study/training and that the same 'shall be treated as on



duty'. Extension of duration may be granted for a period not beyond one year and such extended period shall be treated as leave at his credit and remaining period shall be treated as extraordinary leave. Rule 7 says that ordinarily deputation facility can be availed only once in the entire service. However, this restriction will not apply in the case of short term courses of study/training; they are courses not exceeding three months.

(b) Rule 8 provides for certain facilities: Deputationist is eligible to draw salary excepting during the extended period. However, during the extended period, he is eligible only for leave salary as admissible under these Rules. During the course of deputation, he will be entitled to a stipend equal to one half of Daily Allowance. In cases of deputation for short duration courses, he will be given full Daily Allowances. However, no stipend is admissible during the extended period. Similarly, no stipend is admissible when his deputation is in the same place. He is also not entitled to Traveling Allowance and Tuition Fees



prescribed for the course. This being the position, the submission of learned AGA that there is no right whatsoever to seek deputation for value addition, is bit difficult to countenance. There is some discretion lying with the Government in matters of value addition deputation, is true. However, as any discretion, this too has to be exercised according to rules of reason & justice, vide ***SUSANNAH SHARP v. WAKEFIELD***¹. In the instant case, the representation of the respondent – employee was kept in cold storage even when he had successfully completed the Test in question which is obviously competitive and therefore, the Tribunal has rightly interfered.

(c) The vehement submission of learned AGA that after making value addition, deputationists may quit the public employment and go for greener pasture and that would cause enormous loss to the Public Exchequer, is liable to be rejected inasmuch as, the Government servant

¹ Lord Halsbury in 1891 A.C. 173



concerned has to execute a bond in Form No.19. Rule 9

has the following text:

"The Government servant who is selected for deputation for higher studies or specialized training has to execute a bond in Form No.19 appended to these Rules, before he is relieved of his duties. He will have no option to retire from service voluntarily under the provisions of Rule 285 of Karnataka Civil Services Rules either during the period of deputation or within a period of three years from the date of his return to duty after expiry of the period of deputation."

The above Rule requirement apart, learned counsel for the respondent – employee on instructions undertakes that his client shall report back to duty immediately after making value addition and shall serve in the Department for a period of ten years. This should alleviate the apprehension vehemently expressed by the learned AGA that public money would be drained, by sending the employees on educational deputation.

(d) Value addition is always advantageous to the individual and to the institution in which he/she is employed. That is the reason why Rules of the kind have



been promulgated providing for deputation on normative basis and thereby minimizing the level of likely arbitrariness. Service Jurisprudence in any civilized jurisdiction, bears abundant testimony to the State Policy in public employment for bestowing increments/allowances/encomia to the civil servants who acquire higher educational qualifications during employment. It is relevant what the Apex Court said in ***ALL INDIA JUDGES ASSOCIATION v UNION OF INDIA***², said Paragraph No.41 as under:

"Higher Qualification Allowance

41. The SNJPC noted that for acquiring higher qualifications in law, specialized study of the subjects concerned is involved and the acquisition of such qualifications in the nature of a post graduate or doctoral degree will improve the quality of work of a judicial officer. The recommendations of the SNJPC are summarized below:

"1. The Judicial Officers shall be granted three advance increments for acquiring higher qualification i.e. post-graduation in law and one more advance increment if he acquires Doctorate in Law.

² 2024 SCC OnLine SC 27



2. xxx

3. *The advance increments shall be available to the officer who had acquired the post-graduation degree or Doctorate either before recruitment or at any time subsequent thereto while in service.*

4. *The advance increments shall be granted from the date of initial recruitment, if the officer has already acquired the postgraduation degree or Doctorate and from the date of acquiring the post-graduation or Doctorate degree, if acquired after joining the service.*

xxx”

(e) After all, ours is a constitutionally ordained Welfare State and therefore, it has to conduct itself as a Model Employer, vide **BHUPENDRANATH HAZARIKA** vs. **STATE OF ASSAM**³. Article 42 enacts a Directive Principle injuncting the State to provide just & humane conditions of work/service, having borrowed the idea from the Irish Constitution. That being the position, the petitioners are not justified in keeping employee’s claim for educational deputation, especially when admission to courses of the

³ (2013) 2 SCC 516



kind are time bound and liable to lapse if not availed. Expeditious decision therefore is eminently warranted in matters of the kind. No such expeditiousness nor seriousness warranted in the matter having been shown, the Tribunal is more than justified in granting relief to the respondent – employee.

(f) The last submission of learned AGA that no employee can claim deputation of the kind in the absence of a suitable equivalent post available for accommodating him after value addition, cannot be agreed to. Admittedly, it is the Department of Health & Family Welfare; the respondent-employee is a medical doctor; the higher educational course which he aspires to get admission to, has a great nexus to the kind of duties attached to his post. It is not that something irrelevant is being studied and that would not improve the quality of discharge of such duties. That is not the pleaded case of the petitioners before the Tribunal. The stand of the Government gives an impression that the employee



concerned in no circumstance be permitted deputation for making value addition of the kind.

In the above circumstances, the Petition being thoroughly devoid of merits is liable to be and accordingly dismissed, costs having been made easy.

Sd/-
(KRISHNA S DIXIT)
JUDGE

Sd/-
(C M JOSHI)
JUDGE

Cbc/Bsv
List No.: 1 Sl No.: 11