



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS 24TH DAY OF JUNE, 2019

:PRESENT:

THE HON'BLE MR. JUSTICE L.NARAYANA SWAMY

AND

THE HON'BLE MR. JUSTICE R.DEVDAS

WRIT PETITION NO.47858 OF 2017 (S-KSAT)

BETWEEN

SRI. RAVI PRAKASH
S/O JAYAPPA GOWDA
AGED ABOUT 44 YEARS
ASSISTANT TEACHER
GOVERNMENT LOWER PRIMARY SCHOOL
KALLAHALLI, KARJCHALLI POST
ALUR TALUK
HASSAN DISTRICT-573 213.

... PETITIONER

(BY SRI. N. P. KALLESH GOWDA, ADVOCATE)

AND

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF EDUCATION (PRIMARY)
M S BUILDING
DR. B R AMBEDKAR VEEDHI
BENGALURU-560 001.
2. THE COMMISSIONER
DEPARTMENT OF PUBLIC INSTRUCTIONS
K. R. CIRCLE
NRUPATHUNGA ROAD
BENGALURU-560 001.

3. THE DEPUTY DIRECTOR OF
PUBLIC INSTRUCTIONS
HASSAN DISTRICT
HASSAN-573 201.
4. BLOCK EDUCATION OFFICER
DEPARTMENT OF PUBLIC INSTRUCTIONS
ALUR TALUK, ALUR
HASSAN DISTRICT-573 213.

... RESPONDENTS

(BY SMT. A. ANITHA, HCGP FOR R1 TO R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DTD 30.05.2017, PASSED IN REVIEW APPLICATION NO.19/2017 AND THE ORDER DTD 13.07.2016, PASSED IN APPLICATION NO.3198/2016 VIDE ANNEXURES-A & B BY THE HON'BLE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL AT BENGALURU VIDE ANNEXURES-A AND B AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 10.06.2019 AND COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, **DEVNAS J.**, MADE THE FOLLOWING:

ORDER

The petitioner herein was appointed as Primary School Teacher. On his request, the petitioner was sent to study Hindi Shikshan Parangath course, as an in-service candidate along with a few other Teachers. In this regard, the Commissioner of Public Instructions

had passed an order dated 05.11.2012, permitting the petitioner and 18 other Teachers for further studies, while all such persons were sanctioned study leave for a period of ten months for which period, salary was also granted. The petitioner herein undertook the examination during April-May, 2014 and succeeded in 8 out of 9 subjects.

2. Since permission was not granted to the petitioner to take up the remaining subject for examination, the petitioner approached this Court in W.P.Nos.12776-12778/2015 along with other candidates. By order dated 30.03.2015, this Court directed the Central Institute of Hindi to permit the applicant to write the examination. However, it is submitted that at that juncture, the petitioner herein was called upon for census work by the Department. Moreover, the examinations were conducted at Agra centre and the candidates from Karnataka were required to write the examination at the Agra centre. For the said reasons, it is submitted that the petitioner was unable to take up the examination in the month of

April-May, 2015. It is also submitted that the other candidates who had got the benefit at the hands of this Court were also unable to take up the examination.

3. In this regard, the respondents issued a show-cause notice dated 11.11.2015, calling upon the petitioner to explain as to why the salary and allowances paid to him during the study leave period should not be recovered from his salary. The petitioner herein caused a reply dated 18.11.2015 to the show-cause notice. Not being satisfied with the reply, an endorsement dated 27.11.2015 was issued to the petitioner, while the Deputy Director of Public Instructions (DDPI) directed the Block Education Officer of Hassan District, to recover the leave period salary and allowances paid to the petitioner herein from his monthly salary and to deposit the same to the Government Head of Account. Consequently, a sum of Rs.5,638/- was recovered from December, 2015. Immediately thereafter, the petitioner herein approached this Court by filing an interlocutory application in W.P.Nos.12776-12778/2015, seeking a

direction to allow the petitioner to take up the examination during April-May, 2016. The said application came to be allowed by order dated 05.01.2016. The petitioner herein gave a representation dated 11.01.2016, informing the respondents about the permission granted by this Court and therefore, requested the respondents not to deduct the salary. When the representation made by the petitioner herein did not meet with a positive response from the respondents herein, the petitioner approached the Tribunal in Application No.3198/2016.

4. By order dated 13.07.2016, the Tribunal dismissed the application. A review application was also preferred before the Tribunal in R.A.No.19/2017, but the review application also came to be dismissed by order dated 30.05.2017.

5. Learned counsel for the petitioner submits that there is no time stipulation made in the Karnataka Civil Services Rules, (hereinafter referred to as 'KCSR') to pass the examination. Secondly, it was contended that the study leave was granted for a period of ten months

during the year 2013-14, and thereafter, the petitioner has joined duty and did not seek for any further leave to complete the examination in the remaining subject.

6. It is further contended that the Tribunal erred in not considering the contention of the petitioner that the provision under Appendix-II-A of the KCSR, is not applicable to the petitioner. It is further submitted that no other employee who availed the in-service study leave and failed to complete the course at one stretch was visited with recovery proceedings, while the petitioner herein has been singled out for a discriminatory treatment.

7. Per contra, the learned Additional Government Advocate would submit that the provision under Appendix-II-A of the KCSR is applicable to all Government servants including Government teachers and therefore, the respondents cannot be faulted in initiating action against the petitioner.

8. We have heard the learned counsels and perused the writ papers.

9. Rule 61(3) of the KCSR provides for deputation or grant of study leave to a government servant for prosecution of higher studies or specialised training, as regulated and provided in Appendix-II-A of the KCSR.

Clause 6 of Appendix-II-A reads as follows:

“6. The maximum period of deputation for higher studies or specialised training shall not exceed the normal duration of the course or study or training. This period shall be treated as on duty. If a Government servant is unable to complete the course of higher studies within the normal duration of such course of higher study, he may be granted extension of time upto a maximum period of one year. This extended period shall be treated as such leave as is at his credit and the remaining period shall be treated as extraordinary leave.”

10. The contention of the respondent is that, as provided in Clause 6 of the Appendix-II-A, extension of time upto a maximum period of one year was given to the petitioner and the extended period of one year came to an end during April-May, 2015. The show-cause notice was issued on 11.11.2015. Therefore, the show-

cause notice and action initiated by the respondents is in accordance with law.

11. Having carefully perused the relevant Rules, we find that Clause 10 of Appendix-II-A is the relevant provision which should have engaged the attention of the parties and the Tribunal. Clause 10 reads as follows:

“10. The Government shall be the Competent Authority to sanction the deputation of Government servants for higher studies or specialised training. If Government comes to the conclusion that the Government servant who has been deputed for higher studies or specialised training had not shown sufficient progress in the studies or had failed to complete the course in proper time, it may terminate the period of deputation and direct the Government servant to refund or recover from him the entire expenditure incurred on his deputation including the salary and stipend paid for the period of deputation and extension of time if any, granted for completion of higher study or specialised training. [Notwithstanding anything contained under this rules, in case of persons who have been appointed to a post in Education Department for which requirement of PhD is a pre-condition for service advancement the

following conditions and procedure shall be applicable, namely - - -”

12. Further, Clause II (3)(b) of Appendix-II-A provides that, “*the maximum period of study leave shall be restricted to three years of Doctorate courses and two years of post-graduate or other courses of higher studies.*”

13. We find that the respondents have not paid attention to these relevant provisions. While Clause 6 provides for extension of time upto a maximum period of one year for deputation for higher studies or specialised training, Clause 3 (b) as noted above provides for maximum period of study leave of two years for other courses of higher studies. Thus, these two provisions deal with the period allowable for study leave. On the other hand, it is Clause 10 which deals with recovery.

14. More importantly, Clause 10 envisages that if the Government comes to the conclusion that the Government servant who has been deputed for higher studies or specialised training has not shown sufficient

progress in the studies or had failed to complete the course in proper time, it may terminate the period of deputation and direct the government servant to refund or recover from him the entire expenditure incurred on his deputation including the salary and stipend paid for the period of deputation and extension of time if any, granted for completion of higher studies or specialised training.

15. The show-cause notice issued by the respondents does not disclose whether the petitioner herein joined duty after writing the examination in the month of April-May, 2014. It does not disclose as to whether the petitioner sought for extension of study leave. On going through the relevant provisions, we find that action for recovery of the expenditure incurred by the Government could be initiated, if the Government comes to a conclusion that the Government servant who has been deputed for higher studies has not shown sufficient progress in the studies or failed to complete the course in proper time. Under such circumstances, the Government may terminate the period of deputation

and direct the Government servant to refund the expenditure incurred. On a closer reading of Clause 10, we find that the intention of the legislature is to terminate the period of deputation, when it is found that the Government servant is not making sufficient progress in the studies and continuation of providing leave salary and allowances would be a wasteful expenditure and burden on the State exchequer. Nowhere in the scheme of grant of study leave, as found in Appendix-II-A, it is to be found that if the Government servant who had availed study leave and the benefits flowing from the leave granted, if unsuccessful, irrespective of whether such Government servant joining duty, without seeking further extension of the study leave, is required to repay the study leave benefits.

16. *Prima facie*, we find that the show-cause notice issued by the respondents is not in compliance with Clause 10 of Appendix-II-A of the KCSR. Therefore, while setting aside the show-cause notice dated 11.11.2015, we grant liberty to the respondent-

State Government to issue a fresh show-cause notice, only if it is satisfied that recovery is necessary, as contemplated in Clause 10 of Appendix-II-A. Till then no recovery shall be made.

17. Consequently, we proceed to allow the writ petition in part, while setting aside the order dated 30.05.2017, in Review Application No.19/2017, order dated 13.07.2016, in Application No.3198/2016, passed by the Tribunal and the impugned show-cause notice dated 11.11.2015. The respondents are also directed to repay any amount recovered from the petitioner within a period of eight weeks from the date of receipt of a certified copy of this order.

Sd/-
JUDGE

Sd/-
JUDGE

JT/DL