
vide order dated 22nd December, 2003 (P-9). We are further of the view that the respondent State has mis-used the process of law by moving rectification application only before the successor Presiding Officer rather than doing the same before the same Officer for the reason best known to it. It is well established that '*bench hunting*' is completely prohibited and no one can choose the Judge for decision of his case. Therefore, we do not appreciate the conduct of the respondent department in resorting to filing of rectification application in such manner.

(16) For the reasons aforementioned, the writ petition succeeds. The order dated 25th February, 2003 (P-8) allowing the rectification application of the respondent State as well as the order dated 22nd December, 2003 (P-9) dismissing the rectification application of the petitioner are hereby set aside. We restore the order dated 30th August, 2000 (P-7).

(17) The writ petition stands disposed of in the above terms.

R.N.R.

Before Ashutosh Mohunta and R.S. Madan, JJ.

SHEO KUMAR SAHA,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

C.W.P. NO. 8533 OF 2006

16th March, 2007

Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, Vol. I, Part-II, Appendix 20—Study Leave Rules—Rl. 10—Petitioner allowed study leave to get admission in M. Pharmacy Course of 2 years—Salary and allowances as per 1963 Rules granted—Respondents directing recovery of amount paid excess as daily allowance as petitioner entitled to only study leave allowance which is equivalent to half pay—Rl. 10(1) of 1963 Rules prescribe that half of full daily allowance to which Govt. employee would have been entitled under rules regulating his T.A. if he were on tour to the place of study—Interpretation—Petitioner entitled to daily allowance under Rl. 10—Ordres of recovery by department not tenable—Petition allowed.

Held, that the petitioner was allowed half of the full daily allowance to which the Government employee would have been entitled under Rules regulating his travelling allowance, if he were on tour to the place of study. The case of the petitioner is covered by Rule 10 of the Study Leave Rules, 1963. The respondents cannot deny the benefit of Rule 10 of the Study Leave Rules, 1963. Therefore, the recovery of Rs. 1,16,800 calculated by the department as excess amount paid to the petitioner appears to be not tenable and thus the same cannot be recovered.

(Paras 11 and 12)

Sheo Kumar Saha, petitioner in person.

Dr. Anmol Rattan Sidhu, Additional Advocate General, Haryana
with Deepak Jindal, Assistant Advocate General, Haryana.

JUDGEMENT

R.S. MADAN, J.

(1) The petitioner filed Civil Writ Petition No. 4927 of 2000, which came up for final hearing before the Division Bench of this Court on 18th October, 2000 when the counsel for the respondents suffered a statement that the department would have no objection if the petitioner moved any such application for study leave and the same shall be allowed in accordance with law. Consequently, on 13th March, 2001 the petitioner moved an application to the respondents to grant him the permission for under going study of M. Pharmacy Course. The petitioner appeared before the interview Board for M. Pharmacy Course and he was allowed admission. The petitioner informed the respondents about his having secured the admission as well as for necessary action on the part of the respondents.

(2) Respondent No. 2,—*vide* letter dated 28th June, 2001 addressed to respondent No. 3 directed that the petitioner be allowed study leave as per Haryana Government Rules to execute higher studies of M. Pharmacy and directed that the letter to that extent be given to the petitioner by 29th June, 2001 and compliance of the same be reported to this office immediately. The institution relieved the selected candidates unconditionally and gave them the salary and allowances as per Study Leave Rules of Haryana Government during the period of the course.

(3) On 13th March, 2002, the Financial Commissioner and Secretary to Government of Haryana, Technical Education Department-respondent No. 1,—*vide* letter No. 10/38/2000-ITE, dated 13th March, 2002 informed respondent No. 2 that the Government was agreed to grant study leave of 24 months to the petitioner as per provisions of CSR Vol. I, Part-II, Appendix-20. It was also directed that the bond should be got filled up from the petitioner as per the directive study rules following Sr. 17 in Appendix-20. After getting the necessary permission of the study leave, the petitioner got admission in M.Pharmacy Course at Delhi University and completed the said course of two years. During the 24 months study period at New Delhi, the petitioner has been granted only the half pay every month. The study allowance admissible in study leave under Rules Appendix 10 was withheld as sanction for the same had not been received from respondent No. 2. After the repeated requests, the sanction for the study allowance came after six months of the completion of the two years course in February, 19, 2004.

(4) It was on 21st October, 2004 that respondent No. 4 with *malafide* intention issued a letter dated 21st October, 2004 stating therein that as per instructions contained in memo No. E-8/47/04/752 establishment-I, dated 19th February, 2004, Punjab CSR Vol. II, Appendix 20, Rule 10, study leave allowance is payable equivalent to half pay leave, but the petitioner is alleged to have been paid excess sum of Rs. 1,16,800 as daily allowance, which is not in accordance with law and directed the petitioner to deposit the same upto 27th October, 2004.

(5) On 2nd September, 2005, respondent No. 4 issued a letter dated 2nd September, 2005 and ordered deduction of Rs. 5,000 per month from the pay of the petitioner with effect from August, 2005. In this way, the respondent has recovered a sum of Rs. 40,000 from the petitioner. This Court while issuing the notice of motion had stayed the balance recovery of the daily allowance from the petitioner.

(6) Notice of this petition was given to the respondents and they filed their written statement admitting the factum of granting the permission of study leave as well as payment of study allowance.

The respondents, however, referred to documents Annexure R6 and R7 and submitted that the Finance Department has only allowed the petitioner study leave allowance, which is equivalent to half pay but he was not allowed daily allowance, which the department has paid in excess. In this way, the respondents claim that a sum of Rs. 1,16,800 has been paid in excess to the petitioner, therefore, this sum remains to be recovered from the petitioner, which the petitioner is bound to pay.

(7) We have heard the petitioner, who has appeared in person and the learned counsel for the State.

(8) The petitioner has contented that Rule 10 of the Study Leave Rules, 1963 of the Haryana Government prescribes the allowances to be paid to a person, who proceeds on study leave in the following manner :

“Rule-10. Rates of study allowance :—(1) The rates of study allowance shall be as follows but may be revised from time to time :—

Australia	12\$ (Sterling)
Continent of Europe	£1 (Sterling)
India	Half of the full daily allowance to which the Government employee would have been entitled under rules regulating his travelling allowance, if he were on tour to the place of study.
New Zealand	12\$ (Sterling)
United Kingdom	16\$ (Sterling)
United States of America	30\$ (Sterling)

(2) *The rates of study allowance to be granted to a Government employee who takes study leave in other countries shall be such as may specially be determined by the Competent authority in each case.*

(3) In cases where a Government employee is on study leave at the same place as his place of duty the leave salary, plus the study allowance shall not together exceed the pay that he would have otherwise drawn had he been on duty."

(9) Thus under the garb of this Rule, the respondents claim that the petitioner has been paid daily allowance to which he was not entitled as per the letter of the Finance Department Annexure P4.

(10) It is pertinent to mention here that the respondent has already recovered a sum of Rs. 40,000 from the petitioner upto the date of the filing of the writ petition and the balance amount was stayed by this Court.

(11) Learned State counsel when confronted with Rule 10 of study allowance as envisaged under the Study leave Rules, 1963 did not dispute that the petitioner was allowed half of the full daily allowance to which the Government employee would have been entitled under Rules regulating his travelling allowance, if he were on tour to the place of study.

(12) The case of the present petitioner is covered by Rule 10 of the Study leave Rules, 1963. We feel that the respondents cannot deny the benefit of Rule 10 of the Study Leave Rules, 1963. Therefore, the recovery of Rs.1,16,800 calculated by the department as excess amount paid to the petitioner appears to be not tenable and thus the same cannot be recovered.

(13) In the light of the above discussion, the writ petition is allowed and the impugned orders Annexures P6 and P7 are set aside. It is ordered that the amount of Rs. 40,000, which has been already recovered from the salary of the petitioner while making recovery of Rs. 1,16,800 in installments shall be refunded to the petitioner within a period of three months from the date of decision of this writ petition. No order as to costs.