

Before G. R. Majithia, J.

SOHAN SINGH AND OTHERS,—Petitioners.

versus

THE STATE OF HARYANA AND ANOTHER,—Respondents.

Civil Writ Petition No. 9876 of 1990

10th July, 1990

Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, Vol. I, Part—Rls. 8.126 & 8.23—Service of Engineers Class II Public Works Department (Irrigation Branch) Rules, 1970—Rl. 16(1)—Junior Engineers selected to undergo Special Degree Course—Petitioners asked to apply for type of leave due—Period spent in obtaining degree—Not to be counted as duty—Service conditions regulated by statutory rules—Concessions cannot be claimed as a matter of right—Acquiring of higher qualification—Does not entitle the petitioners for higher pay-scale—Promotions to be made under Rl. 16(1).

Held, that the petitioners in pursuance of the policy decision of the Government submitted their applications for selection for the special Degree Course. On consideration of their respective merits they were selected and had undergone the said Course. The policy decision under which the petitioners' names were sponsored specifically provides that the officials who were selected would join the course and shall proceed on leave of the kind due to them. Now they cannot say that the policy decision under which they have taken the benefit should be read otherwise. The petitioners were fully aware that their names had been sponsored for the Three-Year Degree Course and they were to bear their own expenses and they had to apply for leave of the kind due to them. The "leave of the kind due" means the leave which is permissible to them under the Rules. The petitioners had availed the benefit under the policy decision of the Haryana Government and it will be presumed that they had availed the benefit on the terms and conditions laid down in the policy decision. They cannot be heard saying that they should be granted study leave for the period for which they had undergone the Three-Year Degree Course and it should be treated as duty period. There was no such provision in the policy decision taken by the State Government. (Para 7)

Held, that the concession shown to some on a given set of circumstances will not entitle the petitioners to claim the same as a matter of right. The service conditions of the petitioners are regulated by statutory rules. The right or privileges, if any, accrue to the petitioners from the statutory rules and not otherwise. (Para 8)

Held, that it is for the appropriate Government to decide whether an official on obtaining higher qualifications during service is entitled to a higher scale of pay as is admissible to those in service and similarly situated having higher qualification. The submission has no substance. The petitioners' claim for promotion has also to be rejected for the reason that promotions, if any, have to be made under the provisions of rule 16(1) of the Haryana Service of Engineers Class II Public Works Department (Irrigation Branch) Rules, 1970. (Paras 12 & 13)

Writ Petition under Article 226 of the Constitution of India praying that this Hon'ble Court may be pleased to—

- (i) send for the records of the case;*
- (ii) dispense with the advance notice of motion on the respondents with requisite copy of the writ petition;*
- (iii) to dispense with the filing of the original/certified copies of Annexures;*
- (iv) to award the costs of this writ petition in favour of the petitioners;*
- (v) it is further prayed that—*
 - (a) that a writ in the nature of mandamus or any appropriate writ, order, or direction be issued directing the respondents to grant the petitioners study leave and treat the duration of this degree course as being on duty;*
 - (b) to release full pay and allowances of the duration of the course;*
 - (c) to consider the claim of the petitioners for promotion to the post of S.D.Os.;*
 - (d) to grant higher pay etc. for their acquiring higher qualification in form of incentives;*

OR

Any other order or direction which this Hon'ble Court may deem fit and just in the circumstances be passed in favour of the petitioners.

J. L. Gupta, Senior Advocate with Vikrant Sharma, Advocate,
Jaswant Chauhan, Advocate, for the Petitioners.

B. S. Chauhan, Advocate, for the Respondents.

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ORDER

G. R. Majithia, J.

(1) This judgment will dispose of C.W.P. No. 9876 of 1988 and C.W.P. No. 3748 of 1989 since common questions of law and fact arise for adjudication. I have alluded to the facts as given in C.W.P. No. 9876 of 1988, for adjudicating the dispute.

(2) The facts—

The Department of Technical Education in the State of Haryana directed the Principal, Regional Engineering College, Kurukshetra to introduce a special Degree Course for Diploma holders in the employment of Haryana State under its various Technical Departments and other allied public sector undertakings in the year 1981-82. The petitioners, who are Junior Engineers, were selected to undergo the Three-Year Degree Course in various batches starting in 1982-83, 1983-84 and 1984-85. They have successfully completed the said Course and have joined back as Junior Engineers in the Irrigation Department. They claim that the period for which they were undergoing the Three-Year Degree course is not being counted as on duty with full pay and allowances and they are not being paid the pay and allowances admissible under the Rules for the period they were sponsored and undergone the Three-Year Degree Course. In the petition they have cited instances that the employees who had gone for higher studies were treated on duty with full pay and allowances.

(3) On these premises mandate is being sought from this Court to the respondents to treat the duration of the Three-Year Degree Course as being on duty with full pay and allowances.

(4) Respondent No. 2 in his reply pleaded that a policy decision was taken for providing opportunity for higher technical education to those employees who were already in service of the State of Haryana. Respondent No. 1, decided that those officials who were selected for the special Degree Course shall proceed on leave of the kind due. Pursuant to the Policy decision, the petitioners requested for sponsoring their names for the Special Degree Course. The claim of the petitioners for consideration for promotion to the Haryana Service Engineers Class II, P.W.D. (B & R) was denied. It was denied that the petitioners were entitled to claim the salary for

the period of the said degree course. The petitioners were also not entitled to the benefit of personal pay in the form of advance increments in view of the Government's instructions dated January 10, 1983 (Copy Annexure R-2). The following two points arise for determination;—

- (i) Whether the non-grant of study leave to the petitioners who have improved their qualifications although envisaged under the Rules is arbitrary; and
- (ii) Whether the Petitioners have been discriminated inasmuch as the employees of the State of Haryana, who had improved their qualifications while in service prior to 1982 were given personal pay in the form of increments ranging from one to four and this benefit has been denied to the petitioners.

(5) Rule 8.126 of the Punjab Civil Service Rules Vol. I, Part I, (for short the Rules) as applicable to the State of Haryana deals with the grant of study leave and reads as under:—

“Leave may be granted to Government employees on such terms as may be prescribed by general or special orders of the competent authority to enable them to study scientific, technical or similar problems and to undergo special course of instructions. Such leave is not debited against the leave account.”

(6) Rule 8.23 of the Rules specifies the authorities by whom leave admissible under the Rules has to be granted.

(7) A bare reading of these indicates that a Government employee can be granted study leave to enable him to undergo special course of instructions and to study scientific, technical or similar problems. Under the Rules, the Government has an absolute discretion to treat the study period as duty period or otherwise. The rule further envisages that study leave is not to be debited against the leave account. But, in the instant case, the State of Haryana took a positive decision that the officials who are sponsored for special Degree Course at Regional Engineering College, Kurukshetra, shall proceed on leave of the kind due to them. It will be useful to reproduce the English version of the decision communicated by the Commissioner and Secretary to Government, Haryana, P.W.D.,

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Buildings and Roads Branch contained in Memo No. 9-17-B & R. (Works), 6-83, dated February 14, 1985 and reads thus:—

‘After consideration the Government have taken the following decision in the matter:—

“That the officials who are sponsored for special Degree Course at Engineering College, Kurukshetra shall proceed on leave of the kind due to them. So far as fixation of criteria for making recommendations about departmental candidates for the said Course/reservations of seats is concerned, necessary decision in this behalf shall be taken separately in the joint meeting and information to this effect shall be sent to you shortly. The Hon’ble Chief Minister has approved it.”

Thus, it is clear that the Government had taken a positive decision that those officials who are sponsored for special Degree Course at Regional Engineering College, Kurukshetra shall proceed on leave of the kind due to them. The petitioners, pursuant to the policy decision of the Government submitted their applications for selection for the said Course. On consideration of their respective merits, they were selected and had undergone the special Degree Course. The policy decision under which the petitioners’ names were sponsored specifically provides that the officials who were selected would join the Course and shall proceed on Leave of the kind due to them. Now they cannot say that the policy decision under which they have taken the benefit should be read otherwise. Even otherwise, while sponsoring their names, respondent No. 2 in paragraph 2 has specifically stated as under:—

“It is made clear to the applicants that they will bear their expenses and they will apply for leave as per the Rules as is due to them on getting admission.

The petitioners were fully aware that their names had been sponsored for the three-year Degree Course and they were to bear their own expenses and they had to apply for leave of the kind due to them. The “leave of the kind due” means the leave which is permissible to them under the Rules. I have checked up the record of the Department and find that some of the petitioners were in fact

granted leave of the kind due to them. The petitioners had availed the benefit under the policy decision of the Haryana Government and it will be presumed that they had availed the benefit on the terms and conditions laid down in the policy decision. They cannot be heard saying that they should be granted study leave for the period for which they had undergone the three-year Degree Course and it should be treated as duty period. There was no such provision in the policy decision taken by the State Government. The construction of the statutory rules does not suggest what is emphasized. The first submission of the petitioners is repelled.

(8) The second submission of the learned counsel for the petitioners that some of the employees in other Departments of Haryana State were sent for higher studies and the period spent by them for pursuing the Course was treated to be duty period and not treating the petitioners in the same manner amounts to discrimination. The concession shown to some on a given set of circumstances will not entitle the petitioners to claim the same as a matter of right. The service conditions of the petitioners are regulated by statutory rules. The right or privileges, if any, accrue to the petitioners from the statutory rules and not otherwise.

(9) Similarly, granting of increments to some of the employees who had improved their qualifications during service will not entitle the petitioners to claim the same as a matter of right.

(10) The learned counsel for the petitioners further submitted that respondent No. 1 took the policy decision contained in Memo No. 9-17 B & R (Works), 6-83, dated February 14, 1985 to the effect that the officials who are sponsored for Special Degree Course at Engineering College, Kurukshetra shall proceed on leave of the kind due to them, after the petitioners had already joined the Course. The executive order cannot be passed to the prejudice of the petitioners retrospectively.

(11) The submission of the learned counsel is untenable. In the order permitting the petitioners to join the Special Degree Course, it was specifically stated that during the course of their study, the petitioners would apply for the leave of the kind due to them. The petitioners joined the Course on the basis of that order. They applied for leave of the kind due to them, which was sanctioned. It is not permissible for the petitioners to urge that any executive order prejudicial to their interest was passed after

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they had joined the Course. The order that they will apply for leave of the kind due to them was passed when they were selected for the Course. The policy decision, in the circumstances of the case, is only clarificatory.

(12) The learned counsel for the petitioners also urged that since the petitioners had acquired higher qualifications, they were entitled to the scale of pay permissible to those employees who possessed the Degree qualifications. To highlight this submission, the learned counsel submitted that the petitioners at the time of joining the service were only Diploma holders. Subsequently, they improved their qualifications and they are entitled to the grade which was permissible to the employees having Degree qualification. I am afraid this matter cannot be urged in these proceedings. It is for the appropriate Government to decide whether an official on obtaining higher qualifications during service is entitled to a higher scale of pay as is admissible to those in service and similarly situated having higher qualification. The submission has no substance.

(13) As stated above, the service conditions of the petitioners are regulated by the statutory rules and the right or privileges, if any, has to flow from these rules. The petitioners' claim for promotion has also to be rejected for the reason that promotions, if any, have to be made under the provisions of rule 16(1) of the Haryana Service of Engineers Class II Public Works Department (Irrigation Branch) Rules, 1970.

(14) There is no merit in these writ petitions. The same are dismissed. However, in the circumstances of the case, the parties are left to bear their own costs.

P.C.G.

Before G. R. Majithia, J.

GRAM PANCHAYAT AND ANOTHER,—*Petitioners.*

versus

CHIEF JUDICIAL MAGISTRATE, ROPAR AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1250 of 1988.

10th July, 1990.

Constitution of India, 1950—Arts. 226 & 227—Punjab Gram Panchayat Act, 1952—Ss. 21 & 41—Encroachment on public street—Case is of civil nature—Magistrate—Whether can transfer such case from one Gram Panchayat to another.