



**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

Hearing by Video Conferencing

- (i) O.A. No.060/1454/2021
- (ii) O.A. No.060/1455/2021
- (iii) O.A. No.060/1456/2021
- (iv) O.A. No.060/1457/2021

Order pronounced on:09.02.2022
(Order reserved on: 03.02.2022)

CORAM: HON'BLE MR. SURESH KUMAR MONGA, MEMBER (J)
(On Video Conference from Central Administrative Tribunal,
Chandigarh Bench, Chandigarh).
HON'BLE MR. RAKESH KUMAR GUPTA, MEMBER (A)
(On Video Conference from Central Administrative Tribunal,
Bangalore Bench, Bangalore)

(i) O.A. No.060/1454/2021

Dinesh Lawat s/o Sh. Lalit Lawat, aged 32 years, working
as Nursing Officer at GMCH, Sector-32, Chandigarh-160032.
(Group-'C')

.. Applicant

Versus

- 1.The Health Secretary, Chandigarh Administration,
Deluxe Building, Sector 9, Chandigarh-160009.
(gargyp@gmail.com)
- 2.Chandigarh Administration through the Secretary,
Medical Education and Research, Deluxe Building, Sector
9, Chandigarh-160009. (gargyp@gmail.com)
- 3.The Government Medical College & Hospital, Sector 32,
Chandigarh through its Director Principal-
160032.(dpgmch-chd @gmail.com)

(ii) O.A. No.060/1455/2021

Rajesh Kumar Shyoran s/o Sh. Bhairun Ram Shyoran,
aged 32 years, working as Nursing Officer at GMCH, Sector-
32, Chandigarh-160032.
(Group-'C')

.. Applicant

Versus

- 1.The Health Secretary, Chandigarh Administration,
Deluxe Building, Sector 9, Chandigarh-160009.
(gargyp@gmail.com)



2.Chandigarh Administration through the Secretary, Medical Education and Research, Deluxe Building, Sector 9, Chandigarh-160009. (gargyp@gmail.com)
3.The Government Medical College & Hospital, Sector 32, Chandigarh through its Director Principal-160032.(dpgmch-chd @gmail.com)

(iii) O.A. No.060/1456/2021

Lokesh Parashar s/o Sh. Mahavir Prasad Sharma aged 33 years, working as Nursing Officer at GMCH, Sector-32, Chandigarh-160032.
(Group-`C`)

.. Applicant

Versus

1.The Health Secretary, Chandigarh Administration, Deluxe Building, Sector 9, Chandigarh-160009. (gargyp@gmail.com)
2.Chandigarh Administration through the Secretary, Medical Education and Research, Deluxe Building, Sector 9, Chandigarh-160009. (gargyp@gmail.com)
3.The Government Medical College & Hospital, Sector 32, Chandigarh through its Director Principal-160032.(dpgmch-chd @gmail.com)

...Respondents

(iv) O.A. No.060/1457/2021

Vijay Kumar s/o Sh. Mahavir Prasad Sharma, aged 42 years, working as Nursing Officer at GMCH, Sector-32, Chandigarh-160032.
(Group-`C`)

.. Applicant

Versus

1.The Health Secretary, Chandigarh Administration, Deluxe Building, Sector 9, Chandigarh-160009. (gargyp@gmail.com)
2.Chandigarh Administration through the Secretary, Medical Education and Research, Deluxe Building, Sector 9, Chandigarh-160009. (gargyp@gmail.com)
3.The Government Medical College & Hospital, Sector 32, Chandigarh through its Director Principal-160032.(dpgmch-chd @gmail.com)

... .Respondents

Present: Shri K.B. Sharma, Advocate, for the applicants.
Shri Arvind Moundgil, Advocate, for the respondents.



ORDER

Per: SURESH KUMAR MONGA, MEMBER (J)

1. Original Application No.060/1454/2021 titled as **Dinesh Lawat Vs. Chandigarh Administration & Others**, Original Application No.060/1455/2021 titled as **Rajesh Kumar Shyoran Vs. Chandigarh Administration & Others**, Original Application No.060/1456/2021 titled as **Lokesh Parshar Vs. Chandigarh Administration & Others** and Original Application No.060/1457/2021 titled as **Vijay Kumar Vs. Chandigarh Administration & Others** are taken up together for disposal as a common question of law and fact is involved in all these cases. With the consent of learned counsels for the parties, the facts are being extracted from the Original Application No. 060/1454/2021 titled as **Dinesh Lawat Vs. Chandigarh Administration & Others**.

2. Pleaded case of the applicant herein is that he possesses the qualification of B.Sc. Nursing. He joined the services of the respondent department as Nursing Officer on 16.10.2012. He wanted to pursue the M.Sc Nursing Course for the academic year 2021-22 and, therefore, submitted an application dated 13.10.2021 requesting thereon the respondents to issue a 'No Objection Certificate' to appear in the entrance examination to be conducted by Baba Farid University of Health Sciences,



Faridkot. It is his pleaded case that the aim to pursue the said course is in public interest as he is keen to develop the higher skills and level of knowledge in the nursing practices to provide a higher standard of nursing care to patients.

3. It has further been pleaded that the applicant appeared and passed the entrance exam held on 22.10.2021 and ranked at Sr. No. 14 in the Merit list. He was called by the University for counselling on 29.10.2021. After undertaking an exercise of counselling, Baba Farid University of Health Sciences, Faridkot allotted him a seat in M.Sc. Nursing Course against Govt. quota in Saraswati Professional & Higher Education College of Nursing, Gharuan. Since the respondents had already granted 'No Objection Certificate', therefore, the applicant deposited the requisite fee to the tune of Rs.87,500/- on 29.10.2021.

4. It has further been averred that the Saraswati Professional & Higher Education College of Nursing, Gharuan is affiliated with the Baba Farid University of Health Sciences, Faridkot. The applicant submitted an application with Respondent no. 3 on 30th October, 2021 requesting therein to grant him study leave w.e.f. 8.11.2021 for a period of two years. The respondents also took a Bond from him on 12.11.2021 that in case he resigns from the services within a period of three years



after completion of the aforesaid course, he would be liable to refund the salary amount with penalty. The applicant's request for grant of study leave has been declined by the respondents while relying upon condition No. 5 of a letter dated 13.3.2012 according to which the study leave can be granted for the courses imparted by the Government Institutions only.

5. The applicant has also pleaded that the President of India issued a notification dated 13.1.1992 making therein a provision that if Chandigarh Administration does not have its own rules, then the rules governing the corresponding posts in the State of Punjab will be applicable ***ispo facto***. The said notification has further been clarified by the Chandigarh Administration vide memo no. 29.10.1992 relating to applicability of Punjab Rules to the employees of Union Territory. It has further been averred that the Chandigarh Administration has not framed the Study leave Rules and, therefore, in view of the notification dated 13.1.1992, the Punjab Rules are made applicable. With all these assertions, the applicant has prayed for quashing of the order dated 29.12.2021 (Annexure A-16). A further prayer has been made for issuance of direction to respondents to grant him the study leave to pursue the M.Sc. Nursing Course.



6. It requires to be noticed here that the applicants in rest of the three cases i.e. O.A. No. 060/1455/2021, O.A. No. 060/1456/2021 and O.A. No.060/1457/2021, have also been declined the study leave on the same very grounds.

7. On notice, the respondents by way of filing a short reply have stated that the Government Medical College & Hospital, Sector 32, Chandigarh deals with the patient care services and, therefore, it has framed certain guidelines in the interest of patient care and smooth functioning of the hospital. It has been admitted that the applicant herein vide his application dated 14.10.2021 requested for grant of permission to apply for M.Sc. (Nursing) Course and he was granted permission only for appearing in the entrance test provisionally subject to fulfillment of terms and conditions of study leave as applicable in the Government Medical College & Hospital, Sector 32, Chandigarh, which were circulated in the year 2012 by the Director Principal of the said Institution. It has further been averred that the applicant's case for grant of study leave has been rejected while placing reliance upon condition no. 5 of the order dated 13.3.2012 according to which, such a permission can be granted for the courses imparted by the Government Institutions only. It has still further been stated that due to sudden increase in Covid-19



cases, there is huge rush of patients which is likely to increase many folds in the coming weeks and, therefore, the applicant cannot be spared to pursue his higher study. With all these assertions, the respondents have prayed for dismissal of the Original Application.

8. Heard learned counsels for the parties.

9. Shri K.B. Sharma, learned counsel for the applicant submitted that the subject of study leave is governed by the Punjab Civil Services Rules, Volume-I, Part-II. Appendix 20 with the said Rules provides the Study Leave Rules, 1963 (hereinafter referred to as the Study Leave Rules"). Under the said rules, no distinction between a government and a private institution has been made and, therefore, the order dated 29.12.2021 passed by the respondents cannot be sustained.

10. Learned counsel further submitted that the executive order dated 13.3.2012 issued by respondent no.3 cannot override the provisions of statutory rules. While expanding his arguments further, Shri K.B. Sharma, learned counsel for the applicant submitted that the applicant appeared in the entrance examination conducted by the University and after qualifying the said test, before depositing the heavy amount of fee, he had obtained a 'No Objection Certificate' and, therefore, the respondents



cannot deny him the study leave as he has already altered his position substantially.

11. Shri K.B. Sharma, still further submitted that the respondents cannot be allowed to maintain the stand that due to increase in number of Covid-19 cases, the applicant cannot be permitted to pursue the higher studies as this was never a ground to reject his application for study leave.

12. Per contra, Shri Arvind Moudgil, learned counsel for the respondents submitted that the respondents are well within their right to decline the study leave to applicant as according to Clause 5 of the order dated 13.3.2012, an employee can be allowed study leave for pursuing higher study only from the government institutions. He further submitted that due to increase in Covid-19 cases in the Union Territory of Chandigarh, the applicant cannot be spared to avail the study leave.

13. We have considered the rival contentions of learned counsels for the parties and also perused the records of the case.

14. Indisputably, the applicant vide letter dated 13.10.2021 requested the respondents to grant him permission to appear in the entrance examination for M.Sc. Nursing course to be conducted by Baba Farid University of Health Sciences, Faridkot. The applicant appeared in the



Entrance Examination conducted by the said University on 22.10.2021 and remained successful in the said test. He was ranked at Sr. No. 14 in the merit list. He was called by the University for Counselling on 29.10.2021. Before appearing in the Counselling, the applicant obtained a 'No Objection Certificate' from the Government Medical College & Hospital, Sector 32, Chandigarh on 28.10.2021.

15. After an exercise of counseling, the University allotted a seat of M.Sc. Nursing Course to applicant on 29.10.2021 in the Saraswati Professional & Higher Education College of Nursing, Gharuan. The said seat was allotted to the applicant against government quota. Since the applicant had already obtained a 'No Objection Certificate' before joining the session of counselling, therefore, immediately after getting the seat allotted, he deposited a sum of Rs.87,500/- towards requisite fee with the said Institution. Now the respondents have declined the applicant's request for grant of study leave by way of an order dated 29.12.2021 only on the ground that such a benefit can be allowed for the courses imparted by Governmental Institutions only. While issuing the said order, the respondents have placed reliance upon an order dated 13.3.2012 issued by the Director Principal, Government Medical College & Hospital, Sector 32,



Chandigarh, which in our considered view cannot be sustained.

16. Admittedly the subject of study leave is governed by statutory rules known as Study Leave Rules, 1963, which nowhere makes a distinction between a Governmental and private Institution. There are only three exceptions which have been carved out in Rule 3 (3) of the said Rules which are reproduced hereunder for ready reference :-

(3) Study leave shall not be granted, unless :-

(i) it is certified by the authority competent to sanction leave that the proposed course of study or training shall be of definite advantage from the point of view of public interest;

(ii) it is for prosecution of studies in subjects other than academic or literary subjects or it is applied for by a Medical Officer for prosecuting course of post-graduate study in Medical Sciences and the applicant obtains a certificate from the Director, Health Services, Punjab, to the effect that such study shall be valuable in increasing the efficiency of such Medical officer in the performance of his duties; and

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

17. It is not the case of the respondents that the applicant's case falls in any of the above quoted three exceptions. The respondents have emphatically relied upon an executive order issued by the Director Principal of the Government Medical College & Hospital, Sector 32, Chandigarh according to which an employee can be granted study leave to pursue his higher studies for the courses



imparted by Governmental Institutions only. In our opinion, an executive order cannot supplant the statutory rules. It is apparent from the Study Leave Rules that no distinction between governmental and private institutions has been carved out.

18. By now it is well settled proposition of law that an executive order cannot over ride the statutory rules. Our view in this regard is supported by a judgment of the Hon'ble Supreme Court in the case of **PUBLIC SERVICE COMMISSIONER, UTTARANCHAL VERSUS JAGDISH CHANDRA SINGH BORA & ANOTHER**, 2014 (8) SCC 644 and another judgement by a Division Bench of the Hon'ble High Court of Punjab and Haryana in CWP No. 22491 of 2014 **NITA MALLICK VS. PGIMER CHANDIGARH & OTHERS** decided on 21.3.2016. Therefore, we are of the considered view that the order dated 29.12.2021 (Annexure A-16) passed by the respondents cannot be sustained.

19. Yet, looking at the case from another angle, the order dated 29.12.2021 passed by the respondents cannot be sustained as after obtaining the 'No Objection Certificate' from the respondents on 28.10.2021, the applicant proceeded to join the session of counseling on 29.10.2021. Since he had a 'No Objection Certificate' in his hand, therefore, he deposited a sum of Rs.87,500/- towards requisite fee as demanded by the Saraswati Professional &



Higher Education College of Nursing, Gharuan. It is beyond our comprehension that the respondents while issuing the 'No Objection Certificate' were not aware of that the same will be acted upon by the applicant. It is only because of issuance of the said 'No Objection Certificate', the applicant altered his position substantially and parted with a hefty amount towards the requisite fee.

20. In the facts and circumstances it will be highly inequitable to allow the respondents to go back and now deny the benefit of study leave to applicant as the proposed course of study, in our opinion shall be of definite advantage from the point of view of public interest. The approach of the respondents, while issuing the order dated 29.12.2021, is highly irrational and as such being arbitrary cannot stand the scrutiny of Article 14 of the Constitution of India.

21. The plea raised on behalf of the respondents that the applicant cannot be spared on account of exigency of service because of sudden increase in the number of Covid-19 cases, in our opinion, can also not be countenanced, as the reason which has now been pointed out by the respondents, do not form the part of the order impugned herein. Even the office noting, which the applicant has obtained under the provisions of Right to Information Act, 2005, nowhere discloses that the said



reason became the basis to deny the benefit of study leave to applicant herein.

22. In view of the principles laid down by the Hon'ble Supreme Court in the case of **MOHINDER SINGH GILL VS. CHIEF ELECTION COMMISSIONER & OTHERS**, 1978 SCR (3) 272, the above stance maintained on behalf of the respondents cannot be approved. It has been held in the said report that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. The Hon'ble Supreme Court has further gone to the extent of observing that otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds later brought out.

23. In the conspectus of discussions made hereinabove, we are of the considered view that the order dated 29.12.2021 (Annexure A-16) being illegal and arbitrary cannot be sustained and the same deserves to be quashed.

24. Accordingly, all the above captioned four Original Applications are hereby allowed. The impugned order dated 29.12.2021 is quashed. The respondents are directed to consider the applicants' cases for grant of study



leave under the provisions of Study Leave Rules, 1963 and relieve them forthwith from their duties enabling them to pursue their higher studies without loss of any further time.

25. Ordered accordingly.

26. However, there shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (A)

(SURESH KUMAR MONGA)
MEMBER (J)

HC*