

ITEM NO.3

COURT NO.4
(HEARING THROUGH VIDEO CONFERENCING)

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No.12275/2020

(Arising out of impugned final judgment and order dated 16-10-2019 in OPCAT No.117/2019, 16-10-2019 in OPCAT No.133/2019, 16-10-2019 in OPCAT No.140/2019 passed by the High Court Of Kerala At Ernakulam)

THE DIRECTOR GENERAL, ESIC & ORS.

Petitioner(s)

VERSUS

PARVATHY V.S. & ORS.

Respondent(s)

(FOR ADMISSION and I.R.; IA No.76002/2020 - FOR CONDONATION OF DELAY IN FILING; IA No.76003/2020 - FOR EXEMPTION FROM FILING O.T.; and, IA No.76004/2020 - FOR EXEMPTION FROM FILING AFFIDAVIT)

Date : 18-09-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE VINEET SARAN
HON'BLE MR. JUSTICE AJAY RASTOGI

Counsel for the Parties:

Mr. Manish Kumar Saran, AOR

Mr. Rajiv Shankar Dvivedi, AOR

Mr. Hari Raj M.R. Adv.

Ms. Arti Dvivedi Adv.

Mr. Sushant Kr. Sarkar Adv.

Mr. Rishabh Jain

Mr. Kaleeswaram Raj, Adv.

Thulasi K. Raj, Adv.

Ms. Maitreyi Hegde, Adv.

Ms. Aruna, Adv.

Mr. Nishe Rajen Shonker, AOR

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Original Application No.533 of 2018 was filed by the respondents herein seeking following reliefs:

- "i) To set aside Annexure A27 as unjust, illegal and arbitrary;
- ii) To set aside Annexures A22 to A26 to the extent to which those only sanctioned extra ordinary leave to the applicants and not the study leave with all consequential benefits;
- iii) To declare that the applicants are entitled to study leave from the period 1.5.2018 to 30.4.2021 with all consequential benefits under Rule 50 of CCS (Leave) rules;
- iv) To direct the respondents 1 to 3 to pass appropriate orders granting the applicants the study leave with all the consequential benefits under Rule 50 of CCS (Leave) Rules leave from the period 1.5.2018 to 30.4.2021;
- v) To direct the respondents 1 to 3 to pass appropriate orders recalling Annexures A22 to Annexure A26 orders;
- vi) To direct the respondents no.1 to 4 to disburse the due leave salary for the applicants from the month of May 2018 with immediate effect treating the applicants as the persons who are granted study leave under Rule 50 of CCS (Leave) Rules from the period 1.5.2018 to 30.4.2021;
- viii) To issue such order appropriate orders or directions that this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case.

The first relief pertained to Annexure A-27, namely, communication dated 09.05.2017, which was issued by the Employees State Insurance Corporation and was to the following effect:

"To

1. Directorate (Medical) Delhi.
2. Directorate (Medical), Noida.
3. Medical Superintendent of All ESIC Hospitals.
4. Dean of all ESIC PGIMSR & Medical Colleges.

Subject: Regarding Study leave in r/o Medical Officers

Sir,

It has been observed that proposals are being sent to Hqrs. Office for approval of Competent authority for sanction of study leave without proper verification of instructions issued earlier.

In this regard, All MS/Dean/D(M)D/D(M)N are hereby advised that they should restrict the no. of applications for study leave to 4% of their In-position Specialists/GDMOs to avoid any rejection at later stage for study leave. They should also confirm while recommending the study leave that in the event of final selection of Candidate, no substitute will be required against the specialist/GDMO released for study leave.

Further, if any NOC is given beyond 4% of specified quota for study leave, then concerned MS/Dean should be responsible for such deviations.

This is for strict compliance with immediate effect."

The Central Administrative Tribunal while accepting said Original Application No.533 of 2018 and similar Original Applications declared as under:

"24. After considering all factors, we have no hesitation in concluding that the Original Applications have merit on their side. Accordingly, we allow all the three original Applications and the prayer contained in the 3 Original Applications are allowed in full except for the interest claim on the delayed salary. All emoluments should be disbursed in time and any arrears as on today should be disbursed within 15 days of receipt of a copy of this order. No costs."

In a challenge raised therefrom, the High Court found that the concerned Policy, namely, the communication dated 09.05.2017 was based on sound reasoning and was in the interest of the Organization. However, according to the High Court, the implementation of that Policy was wrong.

We have heard learned counsel for the petitioner. We do not see any reason to interfere in the matter.

It is, however, clarified that the Policy in question, though set-aside by the Central Administrative Tribunal, has been found by the High Court to be based on sound reasoning and, as such, the first prayer made in Original Application No.533 of 2018 and other connected matters stood rejected.

With the aforesaid clarification, these Special Leave Petitions stand dismissed.

Pending applications, if any, also stand disposed of.

(MUKESH NASA)
COURT MASTER

(PRADEEP KUMAR)
BRANCH OFFICER