



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 15446/2024

Hemlata Choudhary W/o Shri Rohit Potaliya, Aged About 28
Years, Resident Of Saran Nagar, C Road, Jodhpur.

----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary,
Department Of Law And Justice, Government Of
Rajasthan, Jaipur.
2. The District And Sessions Judge, Jodhpur Metropolitan,
Jodhpur.

----Respondents

For Petitioner(s) : Mr. Sushil Solanki.
For Respondent(s) : Mr. Manjul Shrimali, AGC.

HON'BLE MR. JUSTICE ARUN MONGA
Order (Oral)

05/11/2024

1. Petitioner is an aspirant to become a teacher by undergoing the pre requisite B.Ed. course. She has already secured admission at Choudhary Bansi Lal University, Bhiwani, Haryana. Impugned herein is an order dated 06.09.2024 (Annex.4) passed by District & Sessions Judge, Jodhpur Metro, Jodhpur, in his administrative capacity, vide which, the petitioner has been denied extraordinary leave for improving her academic qualification by undertaking B.Ed. Course.

2. Succinctly speaking, relevant facts of case are as follows:
Petitioner is serving on the post of Clerk Grade II in the office of District & Sessions Judge, Jodhpur Metro, Jodhpur, since 20.12.2017.



2.1 The petitioner submitted an application seeking permission to pursue the B.Ed. course as well as to request the sanction of extraordinary leave without pay, as per the applicable service rules. The petitioner has already deposited the admission fees. The counseling is scheduled to be held in the first week of September 2024, and if permission/N.O.C. is not granted by then, her admission will be canceled.

2.4 The petitioner had earlier also approached this Court by filing a writ petition, S.B.C.W.P. No. 13969/2024. A Coordinate Bench of this Court vide an order dated 24.02.2022 directed respondent No. 02 to consider the petitioner's case for the grant of extraordinary leave to pursue the B.Ed. Course in accordance with law.

2.5 However, the petitioner's application for extra ordinary leave was rejected by order dated 06.09.2024, premised, inter alia, on the reasoning that the said course is not related to the efficiency of the petitioner's work. Same is thus not in the interest of the department.

3. The stand taken by the respondents in their reply, apart from other grounds, is that according to the Rajasthan Service Rules, 1951, the maximum reasonable period for study leave is generally considered to be 12 months. However, the petitioner has sought leave for 2 years. Furthermore, it is not in the interest of the office/court for the petitioner to do the B.Ed course. It is thus stated that the petitioner is not entitled to the extraordinary leave of two years. Reliance is placed on Rule 59 of the Rajasthan Service Rules, 1951 asserting that leave cannot be claimed as a matter of right. It is at the discretion of the leave sanctioning



authority to refuse to sanction leave in the interest of public service or to cancel the sanctioned leave at any time.

3.1. It is also stated in reply that at present there are 23 posts of Clerk Grade II vacant in Jodhpur Metropolitan Jurisdiction. Amongst the serving 48 Clerk Grade II staff, most are promoted personnel from Class IV employees/process servers who lack knowledge of computers/typing. Given that the courts are now computerized, it is essential for personnel to have computer skills, and there is a shortage of such staff in this jurisdiction.

4. In the aforesaid backdrop, I have heard learned counsel for the respective parties and have gone through the case file.

5. The learned counsel for the petitioner contends that the respondent's decision to reject the petitioner's application for extraordinary leave is illegal, arbitrary and unreasonable. The petitioner's application was denied based on Rule 110 of the Rajasthan Service Rules, which applies to study leave, while the petitioner sought extraordinary leave under Rule 96 of the Rajasthan Service Rules, 1951.

5.1. The counsel urges that similar leave has been granted in the past to various other employees pursuing different courses, whereas the petitioner's request was wrongly treated as a study leave application.

5.2. The counsel points out that of the 190 sanctioned posts for Lower Division Clerk (LDC) in Jodhpur Metropolitan, 25 were previously vacant. By an order dated 29.06.2023, 48 Clerk Grade II employees were transferred to Jodhpur Metropolitan, with only 6 transferred out. Thus, even if the petitioner's request for leave



to pursue a B.Ed. course is granted, the functioning of the office will not be affected.

6. Per contra, learned counsel for the respondents argues that, under Rajasthan Service Rule 59, leave cannot be claimed as a right. The authority sanctioning leave can refuse or cancel it in the public interest. He states that the petitioner has availed a total of 531 days of leave on various occasions during her six-and-a-half-year service. She was also absent without prior notice or leave approval for certain specific periods, for which separate action is being taken, and a notice has been issued under the Rules. He thus seeks dismissal of the petition.

6.2 In support of his arguments, he emphatically relies on Division Bench judgment of this Court rendered in ***State of Rajasthan & ors. Vs. Dr. Sheikh Mohammad Afzal & Ors.:*** ***D.B. Special Appeal Writ No.428/2022, decided on 20.10.2023.***

7. Having heard, first and foremost, it appears that the reliance placed by the respondents on Division Bench judgment rendered in Dr. Sheikh Mohammad Afzal, *ibid*, wherein the controversy pertained to Rule 110 is misplaced. In the process the petitioner's claim to seek extra ordinary leave has been given a complete short shrift without assigning any valid reasons of denying her the right to invoke Rule 96.

8. In order to better appreciate the controversy, relevant of the amended Rule 96 and Rule 110 of Rajasthan Service Rules, 1951, are reproduced herein below:

(Rule 96 as amended vide notification dated 19.01.2022)





“3. Amendment of Rule 96.- Below sub-clause (b) following further proviso shall be inserted namely.-

“Provided further that a permanent / temporary Government servant may be allowed extra ordinary leave for prosecuting higher study for a period of two years to those, who is not entitled to study leave under Rule 110 or at his option, as the case may be.”

4. The existing GRD no. 3 appearing below Rule 96 shall be deleted.”

(emphasis supplied)

(Rule 110 as amended vide notification dated 19.01.2022)

The existing sub-rule (1) and (3) shall be substituted by the following, namely.-

“(1) Study leave will be admissible to a permanent Government servant to pursue course of study or investigation of a scientific or technical nature which in the opinion of the sanctioning authority is considered necessary in the public interest for the working of the department in which he is employed. It will not be granted to a Government servant who is due to attain the age of superannuation from Government service within five years of the date on which he is expected to return to duty after expiry of study leave. Study leave will not be admissible to an employee who has attained the age of above fifty two years. A bond shall be executed by the employee before sanctioning authority for serving minimum period of five years in the form of bond given in Appendix - XVIII of RSR Vol. - II.

Provided that if a permanent Government servant does not want to avail study leave and he desires to pursue course of study or investigation of a scientific or technical nature by availing Extra Ordinary Leave (EOL), he may be allowed EOL for this purpose without any restriction of serving State Government for any period on expiry of EOL. If such Government servant does not join duty after expiry of FOL and seeks voluntary retirement from Government service, the period of EOL will not count for any purpose i.e. for pension and for advance increments for acquiring higher qualification admissible, if any.

(3) In case of a temporary Government servant who is not covered by provision of sub rule (2), extraordinary leave may be granted for pursue course of study or investigation of a scientific or technical nature certified in the public interest as per provisions of sub-clause (b) of rule 96.”

9. A perusal of the amended Rule 96 viz-a-viz Rule 110 leaves no manner of doubt that extraordinary leave is applicable in those



cases where employees are disentitled to seek leave under Rule 110.

10. Concededly the petitioner has applied for extraordinary leave under Rule 96 *ibid*. In this context reference may be had to an earlier judgment dated 24.02.2022 in SBCWP No.13969/2024, rendered by Single Bench of this Court presided over by Arun Bhansali,J. (as His Lordship was then in this Court). For ready reference, relevant extract thereof, being apposite, is reproduced hereinbelow:

“I have considered the submissions made by the counsel for the parties and have perused the material available on record.

The petitioners, had specifically applied for leave under Rule 96 of the Rules. Rule 96 envisages grant of leave where no other leave under the Rules is admissible or where leave is admissible but the Government servant concerned applied in writing for grant of EOL. Admittedly, though the study leave can be granted under the Rules, the petitioners at their own applied for EOL and as such, the reliance placed by the respondents on the provision of grant of study leave while rejecting applications, cannot be countenanced.

Further though subsequent to the rejection of the applications, the amendment to Rule 96 came into force which reads as under:

“Provided further that a permanent /temporary Government servant may be allowed extra ordinary leave for prosecuting higher study for a period of two years to those, who is not entitled to study leave under Rule 110 or at his option, as the case may be.”

In view of above fact situation, the rejection of petitioners’ applications cannot be countenanced. So far as the submission made that the petitioners cannot seek leave as of right is concerned, the said aspect no doubt true, however, in the circumstances wherein the petitioners have cleared the admission test, and have been granted admission in the colleges, wherein they have deposited the fees, the rejection has to be on very strong and firm grounds as the authority also does not have arbitrary power to refuse grant of leave.”





12. In the light of the aforesaid judgment read with the facts of the present case, I see no reason why the benefit of amended Rule 96 be not accorded to the petitioner.

13. Accordingly, the petition is allowed. Impugned order dated 06.09.2024 (Annex.4) is set aside. The respondents are directed to accept the extraordinary leave application of the petitioner within one week from today to enable her to gain the education of B.Ed., for which, she has already been granted admission at Choudhary Banshi Lal University, Haryana and she has deposited the admission/education fees.

14. Pending application(s), if any, stand disposed of.

(ARUN MONGA),J

270-Sumit/-

Whether Fit for Reporting: Yes / No