

E.Pradeep Prem Kumar Vs. State of Tamil Nadu and ors.

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Court : Chennai

Decided On : Feb-17-2011

Judge : M.Y.Eqbal; T.S.Sivagnanam, Jj.

Acts : [Indian Medical Council Act, 1956](#) - Sections 20, 33; [Constitution of India](#) - Article 226

Appeal No. : W.P.No.2454 of 2010

Appellant : E.Pradeep Prem Kumar

Respondent : State of Tamil Nadu and ors.

Advocate for Def. : Mr.G.Sankaran And Ors.

Advocate for Pet/Ap. : Mr.M.Radhakrishnan, Adv.

Judgement :

O R D E R

1. By way of this public interest litigation, the petitioner who is undergoing his post graduate M.S. degree course in Tirunelveli Medical College and Hospital, has sought for a direction upon the respondents to prescribe working hours, weekly off, leave including maternity leave, holidays, etc. for the post graduate degree students in medical colleges affiliated to the third respondent University.

2. The case of the petitioner is that a candidate, who joins a post graduate programme in any one of the affiliated colleges of the third respondent University, is compelled to work for 24 hours on all 365 days and the third respondent University has failed to frame any regulation to regulate the working hours, and no provision has been made by the University as regards the leave entitlement and the University has totally ignored the relevance of reasonable working hours and need for rest for the students. It is further stated that the Medical Council of India has framed regulations and under Regulation 13.3, there is a duty cast upon the University and the State Government to frame leave rules for such post graduate students. The petitioner has placed reliance on the residency programme, which has been implemented by the Government of Kerala by G.O.Ms.No.20, dated 13.01.2009, and submits that the students undergoing post graduate course of study in Kerala State get 20 days casual leave in a year and 15 days special leave to participate in the conference and seminars and maternity leave upto 4 months with full stipend for women and weekly off for one day. The petitioner further states that the residency scheme in JIPMER also stipulates that working hours should not exceed 12 hours at a time. Thus, the petitioner states that the respondents should frame regulations by prescribing working hours for the post graduate degree students in the medical colleges affiliated to the third respondent University.

3. The Medical Council of India (MCI) have filed a counter affidavit inter alia contending that in exercise of powers conferred under Sections 20 and 33 of the [Indian Medical Council Act, 1956](#), the MCI has published the Post Graduate Medical Education Regulations, 2000, which was approved by the Government of India and as per clauses 13.2 & 13.3, of the said regulation, all candidates joining post graduate training programme shall attend not less than 80% of the imparted training during each academic year and the matter for grant of leave to post graduate students shall be regulated as per the respective State Government Rules. It has been further stated that this Court exercising jurisdiction under Article 226 of the [Constitution of India](#), would not be justified to substitute its opinion over the opinion of the expert bodies created under the statute.

4. The third respondent University in their affidavit have stated that an expert committee has framed regulations for cut off date for admission to Under Graduate/Post Graduate/Diploma courses and percentage of attendance required to appear for the University examination. The said regulations were approved by the Standing Academic Board in its meeting held on 21.06.2010 and the same was approved in resolution passed by the Governing Council in its meeting held on 14.07.2010. Further, the expert committee in its meeting held on 11.08.2010, after making necessary scrutiny and deliberations have framed the regulation with regard to leave to the post graduate students to the effect that the cut off date for admission to Post Graduate Degree/Diploma course is 31st May of every year, the classes will commence from 1st May of the same year and the University examination will commence from 15th April of the next year. 90% of the attendance of the course period excluding any kind of leave is mandatory for the post graduate students to appear for the University examination and there shall be no condonation for lack of attendance for post graduate degree courses. It is further stated that the expert committee has followed the same regulations as approved by the Standing Academic Board in its meeting held on 21.06.2010. With the above averments, the third respondent University prayed for dismissal of the writ petition.

5. Though the State Government has impleaded as the first respondent, and they have not filed counter affidavit.

6. Heard Mr.M.Radhakrishnan, learned counsel appearing for the petitioner, Mr.P.Wilson, learned Additional Advocate General appearing for the third respondent University, Mr.V.P.Raman, learned counsel appearing for the Medical Council of India and Mr.G.Sankaran, learned Special Government Pleader appearing for the respondents 1 & 4.

7. The learned counsel appearing for the petitioner would vehemently contend that the candidates, who are pursuing the post graduate programme in the colleges affiliated to the third respondent University are virtually treated like bonded labourers and compelled to work all 365 days of the year for 24 hours a day; they are all compelled to work for 36 hours continuously, which is not only conducive

for the candidates, but detrimental to the patients, who are treated, since as the post graduate students, they are interns and on account of long working hours, the public are put to danger. The learned counsel placing emphasis on the scheme introduced by the Government of Kerala submits that a similar scheme/regulation has to be introduced in the State of Tamil Nadu. The learned counsel further placed reliance on survey reports, which were conducted in the United States as well as United Kingdom relating to extended duration of work shifts and submits that the survey has reported that on account of extended duration of work shifts has increased the risk of significant medical errors, adverse events and attentional failures in interns across the United States and the results have important public policy implications for postgraduate medical education. Therefore, it is contended by the learned counsel for the petitioner that time has come for the State Government to act and relieve such post graduate interns from such extended working hours.

8. The learned Additional Advocate General submits that the petitioner's contention that the post graduate students/interns are treated as bonded labourers, is ridiculous and the petitioner has lost sight of the fact that the students, who are pursuing their post graduate programme are to be actively associated in the treatment process either surgical or medical procedures and the patient is the study material and a duty is cast on them to be available to render assistance to team of Doctor under whom these post graduate students are attached. The learned Additional Advocate General further submits that the post graduate students are attached to a unit headed by a Professor and they are actively associated in the treatment process, which would equip them better to face future challenges. The learned Additional Advocate General would further submit that the reliance placed on the scheme implemented by the Government of Kerala is of no relevance, since under the scheme framed by the Government of Kerala a resident Doctor is a temporary employee, therefore, certain rules have been framed for the purpose of granting leave by the Government of Kerala and the nature of duties and responsibilities of an interns pursuing post graduate programme in the State of Tamil Nadu is entirely different and it cannot be compared to that of the State of Kerala. Further, the learned counsel placed reliance on the regulation framed by the University, which states that each

academic year shall consist of not less than 200 working days and 90% attendance is compulsory.

9. It is seen that the Government of Kerala by G.O.Ms.No.20, dated 13.01.2009, issued certain directions for implementation of residency programme in Government medical colleges in the State of Kerala. The genesis of such programme is based on a report submitted by a one man committee and the Government accepted the recommendations made by one man committee and evolved a new scheme. It is significant to note under the scheme evolved by the Government of Kerala, a resident doctor has to function as the junior most staff member in the respective department to provide teaching and training and services to the patients and they are the first level managers of specialty departments. Further, under the scheme a resident doctor will be a temporary employee of the institution. The scheme has also fixed remuneration based on the nature of postgraduate study, which the candidate pursues.

10. As rightly pointed out by the learned Additional Advocate General, the postgraduate programme in the State of Tamil Nadu, as regulated by the third respondent University, is different from that of the programme in the State of Kerala. Under the regulations framed by the University called the Regulation for the M.S. Postgraduate Degree Clinical courses, it has been stipulated that each academic year shall consist of not less than 200 working days. The regulation also stipulates the attendance requirements and also specifically states that there shall be no condonation of attendance in postgraduate courses. Therefore, the petitioner may not be justified in approach this Court to direct the academicians to frame a scheme in line with the scheme implemented by the Government of Kerala.

11. As noticed above, the postgraduate residents in State of Kerala are being treated as temporary employees of the respective institution and thereby certain rules and regulations, which are applicable to regular employees have been extended to them. It is for the policy makers and academicians to decide as to what would be the best procedure/regulation to be adopted bearing in mind not only the excellent of education, quality of student training and more importantly

safety of the patients. It is not in dispute that the students pursuing the postgraduate programme assist the team of doctors in the unit, which they are post graduate for administering the treatment to the patients. The concept of internship is "learn and serve". Therefore, if a postgraduate students is over worked and on account of fatigue, there is any error in the line of treatment, it would undoubtedly be against public interest.

12. At this stage, we may refer to a study, which was conducted in the United States, the report which has been downloaded from the website www.plosmedicine.org. This report has been prepared by a research group who wanted to find out whether long shifts worked by interns in USA had an effect on reported medical errors and hence patient safety and specifically whether any harm that happened to patients might otherwise have been preventable. The research appears to have been conducted all US medical school graduates beginning their internships from one particular year-group, by email, and each person was asked whether they wanted to take part in a confidential survey. Individuals who agreed to participate were required to complete a form each month giving details about their working hours, hours of sleep number of extended-duration shifts etc. It is reported that a total of 2,737 interns took part in the survey. It has been stated that in the US medical students, who are doing their internship (first year of postgraduate clinical training) regularly work in the clinic for longer than 24 hours at a time and that doctors are students who work for long shifts make more medical errors and are less able to pay attention to what they are doing. The conclusion of the survey is to the following effect:- In our survey, extended-duration work shifts were associated with an increased risk of significant medical errors, adverse events, and attentional failures in interns across the United States. These results have important public policy implications for postgraduate medical education."

13. In an article "Surgical Training and Working Time Restriction" published in the British Journal of Surgery Society Ltd, it has been stated as follows:-

"Working time restriction has been enforced by law in Europe and North America, decreasing the time that can be spent training in hospital. These regulations are

driven by concern that fatigued trainees who have been deprived of sleep are prone to increased error when delivering care. Furthermore, truck drivers and airline pilots have far more restrictive duty hours than surgeons, and surgeons are not immune to the effects of sleep deprivation and unnatural circadian cycles associated with long shifts. It is also true that trainees' quality of life is improved with shorter hours of duty; they experience a decrease in depression scores and emotional exhaustion, have less risk of motor vehicle accident, have more time with their families, and more time to read."

14. We have referred to the above survey reports and study material with a view to impress upon to the respondent to take a fresh look in the matter bearing in mind that attentional failures in interns leading to medical errors may have disastrous consequences and ultimately affecting public health. Moreover the time schedule fixed in the Government hospitals as also corporate hospitals compelling the doctors doing post graduate courses/interns to work continuously 36 hours or even 24 hours at one stretch cannot be appreciated. Therefore, the respondents may take note of the above study and if so advice could constitute a team to conduct a study on the conditions prevailing in Tamil Nadu and if the study report reveals a disturbing trend in error of diagnosis or treatment, the respondent shall revisit the matter and frame fresh regulations to regulate the pattern of the postgraduate programme in line with the programme schedule adopted in other countries.

15. For the above reasons, we dispose of the writ petition with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

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