

**(2012) 05 DEL CK 0414**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 2923 of 2012**

Chaman Kumar

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

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**Date of Decision : 29-05-2012**

**Acts Referred:**

**Citation : (2012) 05 DEL CK 0414**

**Hon'ble Judges : Suresh Kait, J**

**Bench : Single Bench**

**Advocate :** Sandeep Aggarwal, Mr. Soumyajit Pani, Mr. V M Srivastava, Mr. Ujjal Banerjee, for the Appellant; Mohinder S Rupal, for R-1 and Mr. Anurag Mathur, for R-2, for the Respondent

**Final Decision : Dismissed**

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## **Judgement**

Suresh Kait, J.

CM APPL. No. 7158/2012 (exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

W.P.(C) No. 2923/2012

1. Vide order dated 16th May, 2012, notice issued in the instant petition and listed on 21st May, 2012. The petitioner did not serve upon the respondent no. 2/ Ramjas College. Therefore, fresh notice was issued for 21st May, 2012 and the respondent no. 2 was given liberty to file counter affidavit to the instant petition and CM for stay as well. The petitioner moved a fresh application vide CM No. 7157/2012 and seeking direction to restrain the respondents from taking any coercive action against the petitioner, till the next date of hearing i.e, 19th July, 2012.

2. It is stated in the instant application that the petitioner submitted its e-mail

dated 17th August, 2011 to the respondent no. 1/University and it was duly informed about the offer for Ph.D Course. A teacher of a College cannot directly communicate with the University and application has to be made through College concerned as done by the petitioner as per rules. Thus, petitioner followed proper channel. Furthermore, the application seeking study leave has been duly recommended by Professor Jagdish Saran, who happens to be the Head of the Department, (Statistics), University of Delhi. Therefore, the University of Delhi i.e, respondent no.1 was well informed in the present case. It was only in pursuant to the Governing Body's decision that the petitioner went to pursue his Ph. D at Edinburgh University.

3. The petitioner has already completed his first semester of Ph.D course having scored a staggering 98.33% marks in the said examination. The impugned e-mail cancelling the study leave at this belated stage would cause irreparable damage and injury to the petitioner.

4. Since learned counsel appearing for the parties have extensively argued the application as well as the petition. Therefore, with the consent of the learned counsels, the main petition is taken for final disposal. Consequently, date already fixed on 19.07.2012 stands cancelled.

5. Facts of the case are that on 21st December, 2009, respondent no.2 offered the petitioner to pursue the M.Sc. in Financial Mathematics from Edinburgh University under the Faculty Training Program. Therefore, vide application dated 21st December, 2009, the petitioner had applied for M.Sc. in Financial Mathematics under the Faculty Training Programme.

6. On 3rd May, 2010, the offer of the petitioner was duly accepted and on 3rd May, 2010, the College of Science and Engineering, the University of Edinburgh offered admission to M.Sc. Financial Mathematics (jointly with Heriot-Watt University).

7. On 11th June, 2010, respondent no. 1-University informed the petitioner that he had been selected by the University under the Faculty Training Programme for doing M.Sc. in Financial Mathematics at the University, mentioned above.

8. On 5th July, 2010, respondent no.2-Ramjas College issued a letter certifying that the petitioner was selected by the respondent no.1 under the Faculty Training Programme to pursue M.Sc. in Financial Mathematics at the University of Edinburgh for the Academic year 2010-2011 and the petitioner is required to join the course with effect from 9th September, 2010 to 15th September, 2011.

9. Accordingly, the respondent no.2 granted duty leave to the petitioner from 9th September, 2010 to 15th September, 2011 to pursue the said course.

10. Vide letter dated 27th July, 2010, respondent no.1, University of Delhi informed the petitioner that he would be given full scholarship including all the expenses and boarding to pursue his M.Sc. Course.

11. On 3rd September, 2010, the respondent no.1 directed the petitioner to sign a bond whereby the petitioner was duty bound to serve the University for a period of three years after coming back from the training programme failing which the respondent no. 1 will recover all the cost and expenses that they incur for the said training programme.

12. The petitioner accepted the same and signed the said agreement since it is a rare opportunity for him. It is pertinent to mention herein that the Principal of respondent no.2-Ramjas College was one of the witnesses to the said agreement.

13. On 24th November, 2010 and 30th November, 2010, the petitioner sent an e-mail on 24th November, 2010 to the Dean of International Relations seeking the possibilities of pursuing the Ph.D Programmes at the University of Edinburgh, U.K. as under:-

I am now well settled here and enjoying my life. I needed some clarifications on some issues from Prof. Sahu. Can you please pass the message to him to seek the clarifications. Many of us are willing to join Ph.D Programmes here and we are also finding many opportunities, but we don't have any clarifications from the university whether we can join Ph.D just after the course or not.

14. On 30th November, 2010, the Dean replied through e-mail, as under:-

I hope you remember having signed a bond before moving to get enrolled at Edinburgh. The bond was known to you all for a considerable period of time. It has been signed by two sureties, one of whom is your Principal, I hope that puts things in perspective.

15. Thereafter, on 6th June, 2011, the petitioner applied for study leave to the principal of respondent no.2 with perma application for 42 months w.e.f. 01.09.2011 to 28.02.2015 to pursue his Ph.D course at Edinburgh University.

16. On 15th August, 2011, the petitioner returned to India after successfully completing his M.Sc. in Financial Mathematics from the Edinburgh University under the Faculty Training Programme. Thereafter, on 16th August, 2011, the petitioner joined back his regular duties and also informed the respondents about his joining.

17. On 17th August, 2011, the petitioner made request through an e-mail to Sh. Dinesh Singh, Vice Chancellor of the respondent no.1 requesting him to allow to join Ph.D programme at University of Edinburgh. Also sought personal meeting. However, no response from University side.

18. On 24th August, 2011, the petitioner wrote a letter to the principal of respondent no.2 requesting to waive the serving condition of "three years" service continuously as stipulated in the bond agreement, and allow him to join Ph.D Programme.

19. On 5th September, 2011, the respondent no.2/Ramjas College issued a letter to the British High Commission stating as under:-

Sir,

This is to inform you that Mr. Chaman Kumar, Assistant Professor in the Department of Statistics has been admitted to Ph.D in Probability and Stochastic at the University of Edinburgh, United Kingdom. He shall be on Study Leave to avail of the Ph.D. Program at UK for the duration of the course (i.e. forty two months). The College has no objection if Visa is issued to him.

20. The counsel submits that the petitioner was allowed to join the Ph.D Programme in "Probability and Stochastics" under the said supervisors viz. Dr. Sotirios Sabanis as Principal Supervisor and Prof. Istvan Gyongy as Additional Supervisor.

21. More so, in order to fill up the gap of the petitioner, the respondent no.2 appointed Dr. (Mrs.) Rumi Dutta a lecturer on ad-hoc basis, vide letter dated 10th October, 2011, and was again appointed against the leave vacancy of the petitioner, vide letter dated 13.02.2012.

22. On 4th November, 2011, respondent no.2/Ramjas College issued relieving letter to the petitioner as under:-

Dear Mr. Chaman Kumar,

In continuation to the earlier letter of the College bearing no. RC/PO/609 dated October 14, 2011. I write this to inform you that you have been granted Study Leave for one year on half pay Study Leave. Since you will be availing of award of overseas tuition fees from the School of Mathematics, University of Edinburgh amounting to ₹10700 per annum as estimated Annual Tuition Fees + ₹1000 per annum as additional programme cost. As per the rules and regulations laid down by the University of Delhi since you are getting a grant of more than \$ 10000 per annum but less than \$20000 per annum, you are entitled to only half pay Study Leave. You are relieved from the duties in the College w.e.f. 28th September, 2011 (F.N.).

Further please note that you have signed a bond with the University of Delhi under which it is obligatory for you to serve the College for at least three years. As per rules and regulations for availing Study Leave you are required to serve the College for two years continuously after having availed the Study Leave. Hence you will have to serve the College for five years having availed the Study Leave.

23. On 6th June, 2012, respondent no.1/University sought a clarification from the Principal of respondent no.2/Ramjas College that how the petitioner was granted study leave when he signed a bond agreement with the University to serve University for a period of 3 years after completing the faculty training programme, by stating as under:-

1. It has been reported that Mr. Chaman Kumar, Assistant Professor in the Department of Mathematics and Statistics of your collage has been granted

Study leave by the college for 1 1/2 year to pursue Ph.D Programme from University of Edinburgh, in contrary to the terms and conditions of the agreement made between him and the University.

2. You were aware that the name of Mr. Chaman Kumar was sponsored by the University for one year Master's course under Faculty Training Programme as U21 Network activity for the academic year 2010-11 for the period from 11.9.2010 to 15.9.2011 for which an agreement was made between him and the University to the effect that he will serve the University continuously for a period of three years after the expiry of the training period and you were also one of the witnesses of the aforesaid agreement.

3. Clause 4 of the Agreement states that all sums that may be spent by the University in connection with the course of study abroad (MA/M.Sc.) pursued by the Teacher immediately if he fails to serve the University continuously for a period of three years, from the date of his resuming duty after the expiry of the training period.

4. The matter has been viewed by the University in light of clause 4 of the Agreement and found that it is a fit case to invoke the provision of clause 4(C) of the agreement and all sums spent by the University in connection with the course of study abroad be recovered from him. 5. You are also requested to explain the circumstances for permitting study Leave to Mr. Chaman Kumar in violation of the Agreement that to without prior permission of the University.

24. On 1st March, 2012, the respondent no.2/Ramjas College tend to justify the study leave granted to the petitioner by stating as under:-

The committee noted that Mr. Chaman Kumar's leave application was duly recommended by this Supervisors Dr. S. Sabanis and Prof. Jagdish Saran, Head, Department of Statics, University of Delhi, Delhi. Resolved that Mr. Chaman Kumar, Assistant Professor in the Department of Mathematics and Statistics be granted Study leave for a perod of one year w.e.f. the date of sanction of the Chairman, Governing Body on half pay study leave.

25. On 28th March, 2012, the respondent no.1//University wrote to the respondent no.1/Principal intimating that the petitioner's study leave ought not to have been sanctioned since the same is in violation of the conditions of the bond agreement.

26. On 4th April, 2012, in response to the letter dated 28th March, 2012, the respondent no.2 intimated the petitioner that in view of the letter dated 6th February, 2012, the respondent no.1/University cancelled his study leave with immediate effect. And was asked to join the duty immediately. The Principal of respondent No.2 further intimated that in case the petitioner wants to continue his Ph. D., he can refund all the sums spent by the respondent no.1/University of Delhi.

27. Vide e-mail dated 23rd April, 2012, the petitioner requested the respondent

no.2 to provide him the copies of the necessary documents in connection with the cancellation of the study leave.

28. In reply thereto, vide communication dated 24th April, 2012, the Principal wrote to the petitioner that the petitioner is required to join the duty immediately in the college to fulfil the condition of the bond agreement executed by him with the respondent no.1 and confirming the cancellation of the study leave.

29. Learned counsel for the petitioner has submitted that the petitioner was appointed by the College. Therefore, the College had sanctioned his leave. The University cannot interfere with. The College is the governing body, therefore, the University has nothing to do with this case. Once, the College has granted the leave to the petitioner and the same has been recommended by the Head of the Department.

30. On the other hand, learned counsel appearing on behalf of the respondent submits that the earlier agreement was with the University, whereas he clandestinely entered into the present agreement with the respondent no.2-Ramjas College. As per Rule, the petitioner after completing the study, was to impart the study for three years. Further study leave can be granted only after a lapse of five years of his earlier study leave. The leave sanctioned by the respondent no.2-Ramjas College is contrary to the University Rules and that is in connivance with the Principal and the Head of the Department, who is hardly concerned and he has nothing to do with the said leave rules. Earlier, the leaves were sanctioned and granted by the concerned Department. The University has sought the explanation of the Head of the Department of the Statistics and vide communication dated 18th May, 2012 to the Registrar, University of Delhi, the said HOD has stated as under:-

With reference to the application of Mr. Chandan Kumar, an Assistant Professor in the Department of Statistics, Ramjas College, University of Delhi, Delhi - 110 007, this is to inform you that the teacher came to me personally and I signed the application as Head of the Department of Statistics, University of Delhi, Delhi - 110 007 in good faith as a routine matter, even though this application was not signed by the Principal of Ramjas College, I was not aware that the teacher has signed any bond with the University of Delhi.

31. Learned counsel appearing on behalf of University referred the Revised Study Leave Rules: 2002, reads as under:-

Study Leave may be granted more than once provided that not less than five years have elapsed after the teacher returned to duty on completion of an earlier spell of Study Leave. For a subsequent spell of Study Leave, the teacher shall indicate the work done during the period of earlier leave as also give details of work to be done during the proposed spell of Study Leave. However, the total period of Study Leave in the entire service of the teacher shall in no case exceed five years.

32. Moreso, vide communication dated 14th November, 2011, it is stated by the petitioner as under:-

No Mam, I am not in Delhi. I have joined Ph.D program here at the Edinburgh University after getting the Study Leave and signing new bond that I shall serve for at least five years after my Ph.D. The University and the college authorities were very kind and generous to allow me to join the Ph.D program. I am very thankful and indebted to them. Mam, I shall end you an e-mail authorising my friend to collect the cheque and he will come to get the cheque. Before that I shall ask him whether he is available or not.

33. Thereafter, on 22nd November, 2011, petitioner sent a communication to the Dean, International Relations Office, which is as under :

Thank you for your mail. I am really sorry that the information about my Study Leave is not available in your office. Though, I don't have all the requested documents available with me here, I am attaching documents I have with me right here. I am attaching scanned copies of Leave letter and no objection letter for visa (both from the Principal, Ramjas College). Other information can be obtained from the college and I have requested my college to end you as soon as possible. It has also been mentioned in the leave letter that I shall serve the college for five years after availing of the study leave. If you need any other information, I shall be pleased to provide it.

34. Learned counsel for the respondent has further submits that if he wants to pursue further study, he has to leave the service of the University and thereafter, he can do whatever he wants, but as per the rules, he cannot be permitted to go on further study leave.

35. I have heard learned counsels for parties.

36. It is emerged from the petition that the petitioner had bypassed the University authorities and clandestinely taken the permission from the Principal of respondent No.2. In annexure P-14 at page No.44, I note, on the "performa application for study leave" the recommendations of the Principal of respondent No.2 is not there. However, recommendations of the Head of Statistics Department are there. But, thereafter, the said H.O.D. vide communication dated 18.05.2012 has clarified that the petitioner came to him personally and he signed the said application in good faith as a routine manner, even though his application was not signed by the Principal of Respondent No.2. He has further clarified that he was not aware that the petitioner had signed any bond with University of Delhi. Therefore, in my considered opinion, the said recommendations cannot be considered as a valid.

37. Further, I note the petitioner has relied upon the agreement with Ramjas College, respondent No.2; whereas the earlier agreement was signed with University; therefore, in my view, this agreement also has no value, which is contrary to procedure and rules of the University.

38. The appointment of Dr. Rummi Dutta vide letter dated 10.10.2011 and 13.02.2012 has no relevance as the said appoint was done by respondent No.2 and not by respondent No.1 - University.

39. I further note that in the letter dated 04.11.2011, Annexure P-20, it is clearly mentioned that the petitioner had signed bond with the University, under which, it is obligatory for the petitioner to serve the college for at least three years. It is further mentioned that as per Rules and Regulations for availing study leave, the petitioner is required to serve the college for two years continuously after having availed the study leave.

40. I wonder, learned counsel for petition could not show any such rule to serve for two years. Therefore, the petitioner in connivance with Principal of respondent No.2 has got sanctioned form the college without entering into agreement with the University and without taking the permission from University. Hence, the said permission is against the University rules, therefore, there is no merit in the instant petition.

41. The petition is accordingly dismissed. No order as costs.

CM No. 7157/2012 (direction) & CM No. 6302/2012 (stay)

In view of the orders passed today in the writ petition, the instant applications have become infructuous. The same accordingly stand dismissed.