

(2012) 09 DEL CK 0181
In the Delhi High Court
Case No : LPA No. 482 of 2012

Chaman Kumar

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Citation : (2012) 09 DEL CK 0181

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sandeep Agarwal Alongwith Mr. Soumyajit Pani and Mr. N.A. Singh, for the Appellant; Mohinder J.S. Rupal, Advocate for the University of Delhi and Mr. Anurag Mathur, Advocate for the Respondent No. 2/Ramjas College, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This intra court appeal impugns the judgment dated 29th May, 2012 of the learned Single Judge dismissing WP(C) No. 2923/2012 preferred by the appellant. The said writ petition was preferred impugning the "action of the respondents in cancelling the duly sanctioned study leave of the petitioner vide emails dated 4th April, 2012, 20th April, 2012 and 24th April, 2012" and seeking a mandamus "directing the respondents not to disturb the petitioner in pursuing the Ph.D. Course at Edinburgh University, U.K." This appeal was admitted for hearing. Since the respondents had not had the opportunity to file counter affidavit to the writ petition before the learned Single Judge, opportunity therefor was granted. The counsels have been heard. The appellant joined the respondent no.2 Ramjas College affiliated to the respondent no.1 University as a lecturer in the Department of Statistics on 14th August, 2006. He was, vide letter dated 10th May, 2010 of the University selected for doing Masters Course in Financial Mathematics at the University of Edinburgh in the academic year 2010-2011. As per the said letter dated 10th May, 2010, the expenses towards tuition fee, accommodation, travel and miscellaneous

expenses were to be borne by the respondent University and the absence of appellant from the respondent no.2 College during the study at UK was to be treated as "duty leave" and the appellant during the said period was also to be entitled to pay and allowances of his post in the respondent University. Accordingly the respondent no.2 College granted to the appellant duty leave from 9th September, 2010 to 15th September, 2011 to pursue the said course. A letter dated 27th July, 2010 was also addressed by the respondent no.1 University to the Home Office, UK Border Agency confirming the award of scholarship to the appellant for the full duration of the course and covering full tuition fees (13,150 GBP), full living expenses (10,800 GBP) return airfare and other related costs. It was also mentioned that on completion of his study, the appellant was expected to return to the "University of Delhi" to resume his employment and should serve the University for the next three years.

2. An agreement dated 3rd September, 2010 was also signed by the respondent University and the appellant in which it was inter alia mentioned that all sums that may be spent by the University in connection with the said course of study abroad pursued by the appellant shall be recoverable by the University from the appellant if the appellant fails to serve the University continuously for a period of three years from the date of resuming duty after the expiry of the training period. The training period was mentioned as of one year from 11th September, 2010 to 15th September, 2011.

3. The appellant while still pursuing his Masters Programme aforesaid, on 24th November, 2010 inquired from the University 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 do not have any clarifications from the university whether we can join Ph.D. just after the course or not.

The problem is that if we get an offer for a Ph.D. programme and then refuse it for some reasons (say the university did not grant the leave or otherwise), then they will never consider our application in future. So we are not certain to apply here for the Ph.D. programme as the offer cannot be refused. Can you please seek the clarification from Prof. Sahu and suitably advise us and also email us the policy guidelines regarding this issue so that we can plan our future course of action. It is very important for our career.

4. The Technical Officer, International Relations of the University on 30th November, 2010 replied to the appellant 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.

5. The appellant nevertheless applied for the Ph.D. Programme (Probability and Stochastics) with the University of Edinburgh and was granted admission therein. The said Ph.D. Course is of 42 months duration from 1st September, 2011 to 28th February, 2015.

6. The appellant this time, instead of approaching the University, on 6th June, 2011 sought study leave for the duration of the Ph.D. Course from the respondent no.2 College. At the same time the appellant, even though his duty leave was till 15th September, 2011, on 16th August, 2011 joined his duties with the respondent no.2 College. The appellant vide his letter 24th August, 2011 also sought exemption from the respondent no.2 College of the condition of serving for three years immediately after completion of the Masters Course on 15th September, 2011, even though the agreement in that regard was with the University. The respondent no.2 College vide its letter dated 5th September, 2011 gave its No Objection to the appellant for obtaining visa for the Ph.D. Programme at UK for the duration of the Course and in the said letter also stated that the appellant shall be on study leave during the said period of 42 months.

7. The appellant was vide letter dated 10th October, 2011 of the respondent no.2 College promoted from the post of Lecturer to the post of Assistant Professor.

8. The respondent no.2 College vide letter dated 4th November, 2011 granted study leave to the appellant for one year on half pay inter alia on the condition that the appellant will serve the respondent no.2 College for two years continuously after availing the study leave. Adding the period of three years mentioned in the agreement (supra) of the appellant with the University, the total period for which it was stipulated that the appellant will serve the respondent no.2 College was mentioned as five years, after availing the study leave.

9. The appellant has joined the Ph.D. Programme of the University of Edinburgh and is not in India and filed the writ petition as well as this appeal through his attorney.

10. The respondent No. 1 University on learning of the respondent no.2 College having granted study leave to the appellant, vide its letter dated 6th February, 2012 to the College sought explanation as to how the study leave was granted in violation of the agreement of the appellant with the University and without prior permission of the University. Though an explanation was furnished by the respondent no.2 College but the University vide its letter dated 28th March, 2012 took a stand that grant of study leave to the appellant to pursue Ph.D. Programme without his fulfilling the condition of the agreement aforesaid executed by him to serve the respondent no.2 College for a period of three years after completion of one year's Masters Course could not be considered.

11. The respondent no.2 College accordingly vide its communication dated 4th April, 2012 to the appellant cancelled the study leave earlier granted to the appellant with immediate effect. Vide further communications dated 20th April,

2012 and 24th April, 2012, the appellant was asked to immediately join the duty and to fulfill the condition of the agreement aforesaid with the University; it was also informed that on his failure to so join back, further action against him in accordance with Rules and Regulations of the University shall be taken.

12. Impugning the communications and action aforesaid, the writ petition was filed. The learned Single Judge held that the appellant, in the matter of applying for and obtaining the study leave had bypassed the University and clandestinely taken the permission from the respondent no.2 College only; that the agreement of the appellant to serve for a continuous period of three years after completion of the Masters Course was with the University and not with the respondent no.2 College and thus the study leave granted by the College to the appellant was of no avail; accordingly the writ petition was dismissed.

13. The counsel for the appellant has argued that the employment of the appellant is with the respondent no.2 College and not with the University and the appellant was thus justified in approaching the respondent no.2 College for study leave and which was granted. It is further argued that the respondent no.2 College had also before granting the study leave made the appellant sign an agreement. Attention is invited to the revised Study Leave Rules to contend that the appellant thereunder also was eligible to avail thereof and the grant by the respondent no.2 College of the study leave to the appellant was in accordance therewith. Attention is also invited to the letter dated 23rd July, 2012 of the respondent no.2 College appointing one Ms. Shruti Nandchahal as Assistant Professor against the leave vacancy of the appellant and therefrom it is urged that the study leave granted to the appellant is not to the prejudice of the students.

14. Per contra, the respondent University in its counter affidavit has pleaded that the conduct of the appellant is totally unbecoming of a teacher of the University of Delhi, well known for maintenance of standards and the best of faculty; that the appellant despite cancellation of his study leave is continuing to maintain a defiant attitude and has not joined back; that the appellant in terms of his agreement aforesaid with the University was bound to join back after completion of his Masters Course and to serve for a continuous period of three years; that the design of the appellant can be gauged from the fact that the appellant made plans for doing Ph.D. immediately after joining the Masters Course and went ahead with the Ph.D. Course inspite of having been informed that he was not entitled to; that the respondent no.2 College was not entitled to waive off the agreement condition especially when the Principal of the respondent no.2 College himself was a witness thereto; that the University did not know of the appellant having approached the respondent no.2 College for study leave and the respondent no.2 College having granted the study leave and immediately upon learning thereof took action; that the University, besides the appellant had sent 15 other teachers from various areas of interest to different foreign Universities in the academic year 2010-2011 and though some others had also wanted to join

Ph.D. Programmes in the foreign Universities but had returned upon being reminded of their obligation under the agreement; that allowing the appellant to continue with the same would lead to discipline problems amongst the staff members of the University; that in fact the appellant could not have returned to India during the Masters Programme and the plea of the appellant of having returned to India on 16th May, 2011 shows the appellant to be in breach of the same also. Mala fides against the appellant are also averred from the conduct of the appellant of getting recommendation of the study leave signed from Professor Jagdish Saran, Head of the Statistics who was not even aware of the commitment in the agreement aforesaid and who was not the concerned authority for grant of study leave and who has subsequently explained the circumstances in which he was made to sign the said recommendation; that the form of the application for study leave itself shows that it is to be signed by the Principal of the College and to be submitted to the University and all of which had not been done. It is further pleaded that the University has spent more than Rs. 16 lacs on the appellant on the Masters Programme and which will go down the drain if the appellant does not return and teach for a continuous period of three years after completion of the Masters Programme. It is yet further pleaded that even nominees of the University on the Governing Body of the respondent no.2 College were not present in the meeting when the study leave is claimed to have been sanctioned.

15. The respondent no.2 College in its counter affidavit has inter alia pleaded that the entire cost of the Masters Programme undergone by the appellant was borne by the University; that since in terms of the University of Delhi Rules, a whole time teacher with a minimum three years continuous service is entitled to study leave to pursue study relating to his field of study, the application of the appellant for study leave was considered by the Governing Body of the respondent no.2 College and since the appellant was found to fulfill the eligibility criteria, the study leave was approved. It is however stated that under the Rules, the study leave in no case is to exceed three years.

16. The counsel for the appellant in rejoinder has argued that the University under its Rules could not have made the appellant sign the agreement which he was made to sign when selected for the Masters Programme and the said agreement is thus of no avail.

17. We may however notice that there is no challenge to the said agreement. We thus refuse to entertain the said plea.

18. The counsel for the appellant has argued that the appellant will give undertaking to this Court to, after completion of his Ph.D., serve the respondents University/College for five years. It is also informed that the subject in which the appellant is pursuing Ph.D. is unique and the appellant upon completion of the Ph.D. Course will bring back wealth of knowledge and experience to the respondents University/College. Sympathies are also sought to be invoked by emphasizing that the appellant is physically challenged.

19. Though we must admit that the thought of letting the appellant complete his higher education and of this Court not coming in the way thereof has crossed our minds also but the logical side of our brain, for the following reasons, tells us to decide otherwise.

i. As the term "study leave" denotes, it is a permission for absence from employment or duty or a authorized absence and thus cannot be claimed as a matter of right. Without permission or authorization there can be no study leave.

ii. Merely because an employee may be eligible for leave does not bind the employer to grant such leave. The employer, in taking decision on an application of leave is entitled to consider, not only the eligibility of the employee for leave but also other factors as to its own functioning and if does not find it convenient or practical or conducive to its own affairs to grant leave, is entitled to refuse the same. It is the prerogative of the employer to act according to the exigencies of the situation, keeping in view the best interest of administration. The paramount consideration in granting leave, for an educational institution, is not only the convenience of the teacher but the welfare of the students. The authority which is to sanction leave, can take into account all the relevant facts and either grant or refuse leave.

iii. The employer herein being amenable to writ jurisdiction, this Court, in exercise of powers of judicial review is only to see whether refusal of the leave can be said to be arbitrary, discriminatory or malafide and is otherwise to not sit in appeal over the decision of the employer in this regard. It is after all the employer who has to manage its affairs and decide whether it is convenient or not to grant leave of absence and the Court cannot interfere therewith.

iv. Though it is respondent no.2 College which had employed the appellant but it can not be lost sight of that the entire emoluments etc. of the appellant are borne by the University and not by the respondent no.2 College. It cannot further be lost sight of that the respondent no.2 College under the terms of its affiliation with the University is to function as per the Rules and Regulations of the University and in fact the performance of the duties by the appellant during the term of his employment albeit with the respondent no.2 College is governed by the Rules and Regulation of the University. It yet further cannot be lost sight of that it was the University which had at its own cost and expense introduced the appellant to the foreign University.

v. The Faculty Training Programme under which the University at its own expense had sponsored Masters Course in a foreign University of the appellant and had during the duration thereof also continued to disburse the pay and allowance of the appellant, was for the benefit of the University and its students. Towards the said goal only it was a condition of the same that the appellant on completion of the Masters Course would return and serve the University/College i.e. teach its students for a continuous period of three years.

vi. Knowledge to be imbibed by the appellant in the said Faculty Training

Programme was intended to be shared by the appellant with other faculty members and students in the next three years after return. The said knowledge, in today's fast paced world of knowledge explosion may well become otiose or redundant or obsolete in the further 42 months for which the appellant desires to remain away, defeating the very purpose for which the University sponsored the appellant for the Masters Course. Not only so, the further qualifications of Ph.D. which the appellant now seeks to achieve for himself may not even leave the appellant suitable/fit to teach the students for whom he has been employed, upsetting the entire scheme of faculty/staff assessment of the University.

vii. Thus, objection by the University to the respondent no.2 College granting study leave to the appellant, thereby letting the appellant off his obligation under the agreement with the University cannot be said to be arbitrary or whimsical or malafide. There is in any case no plea thereof.

viii. We also find merit in the contention of the University as to the conduct of the appellant. The appellant as far back as in October, 2011 i.e. much before applying for admission to Ph.D. Programme or joining the same was in no unclear terms told that he could not do so. The appellant inspite of the same surreptitiously obtained the study leave from the respondent no.2 College in breach of his obligation under the agreement with the University.

ix. Considering the volume of staff and faculty of the University, consideration on sympathetic grounds in favour of one can have a cascading effect and cause discipline issues.

x. The respondent no.2 College is also not claiming to be, independently of the University and inspite of the agreement of the appellant with the University being entitled to grant such study leave to the appellant and immediately on objection being taken by the University has cancelled the study leave of the appellant.

xi. The Ph.D. Course of the appellant is of 42 months duration. On the contrary the study leave granted by the respondent no.2 College is of 12 months only. Moreover, the maximum study leave even under the Rules of the University can be of three years i.e. 36 months only and in which time Ph.D. Course would not be completed. For this reason also the claim of the appellant is misconceived.

xii. The respondent no.2 College is already shown to have been forced to appoint another Assistant Professor against the leave vacancy of the appellant. The University will thus stand burdened with the emoluments of the said replacement also. Not only so it is found that replacement vacancies for such long duration themselves become a cause for further litigation.

xiii. It is even otherwise an established principle that this Court in exercise of powers of judicial review will not interfere unnecessarily with the functioning of the educational institutions. [Director (Studies) and Others Vs. Vaibhav Singh Chauhan, and recently reiterated in Sanchit Bansal and Another Vs. The Joint Admission Board (JAB) and Others,].

We therefore do not find any merit in this appeal and dismiss the same. No order as to costs.