

(2021) 09 DEL CK 0202

In the Delhi High Court

Case No : Civil Writ Petition No. 7928 Of 2021, Civil Miscellaneous Application
No. 24630 Of 2021

Dr. Ashok Kumar

APPELLANT

Vs

University Of Delhi & Anr

RESPONDENT

Date of Decision : 27-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2021) 09 DEL CK 0202

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : M.A. Niyazi, Kirti, Kunal Kishor, N. Sethi, Mohinder JS Rupal,
Bhawani Vemban, Apoorv Kurup, Ojaswa Pathak

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J

1. The present petition has been filed by the petitioner with the following prayers:

"In view of the abovementioned facts and circumstances, it is humbly prayed that this Hon'ble Court may be pleased to:-

(a) May issue Writ of mandamus against the Respondent No.1 to grant to the Petitioner study leave enabling him to proceed on the Assignment of Technical Co-ordinator at CERN-Geneva in terms of 'UGC Regulations On Minimum Qualifications For Appointment Of Teachers And Other Academic Staff In Universities And Colleges And Measure For The Maintenance Of Standards In Higher Education, 2018 and corresponding Regulations of the university of Delhi as amended in 2019.

(b) Pass any other order this Hon'ble Court deems fit and proper in the present circumstances."

2. This petition has been filed by the petitioner seeking a direction to the

University of Delhi ('University' for short) to grant him study leave to enable him to proceed to CERN-Geneva for undertaking the Assignment of Technical Coordinator. I may at this stage also state that the University has in its communication dated August 23, 2021, rejected the said request of the petitioner dated March 16, 2021, on the basis of a communication / clarification received by it from the University Grants Commission ('UGC', for short) vide letter dated July 30, 2021.

3. The petitioner joined the University as an Assistant Professor on March 26, 2008. In 2010 Regulations were framed by the UGC in relation to study leave and sabbatical leave. In the year 2013, guidelines were issued to revise the 2010 Regulations.

4. On April 01, 2018, the petitioner was promoted to the post of Associate Professor under the Career Advancement Scheme issued by the UGC.

5. On July 18, 2018 a Gazette notification was issued by the UGC notifying its Regulations called as UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Maintenance of Standards of Higher Education, 2018 ('Regulations', for short). These Regulations include provisions for grant of study leave / sabbatical leave. Regulation 8.2 refers to study leave and similarly 8.3 refers to sabbatical leave. Relevant provisions are reproduced as under:

"8.2 STUDY LEAVE:

xxx xxx xxx

(iii) The study leave shall be granted to an entry-level appointee as Assistant Professor/Assistant Librarian/ Assistant Director of physical Education and Sport/ College DPE&S (other than as Associate

Professor or Professor of University/College/Institution, who is otherwise eligible for sabbatical leave) after a minimum of three years of continuous service, to pursue a special line of study or research directly related to his/her work in the University/College/Institution or to make a special study of the various aspects of University organisation and methods of education, giving full plan of the work.

8.3 Sabbatical Leave:

(i) The permanent, whole-time teachers of the university and colleges who have completed seven years' of service as a Reader/Associate Professor or a Professor may be granted sabbatical leave to undertake study or research or any other academic pursuit solely for the object of increasing their proficiency and usefulness to the university and higher education system. The duration of leave shall not exceed one year, at a time, and two years in the entire career of the teacher.

xxx xxx xxx"

6. The submission of Mr. M. A. Niyazi, learned counsel for the petitioner is primarily that the rejection of the request of the petitioner for grant of study leave because the petitioner is no more Assistant Professor and as an Associate Professor, he is not eligible for the same, is totally erroneous because as per the Regulation referred to above, the petitioner being an entry-level appointee as an Assistant Professor and now being an Associate Professor, who has not completed seven years of service as Associate Professor, and being not eligible for sabbatical leave, need to be granted the study leave.

7. According to him, the interpretation sought to be given by the respondent to the Regulations is in violation of basic rules of interpretation of Statutes. According to him, there is no ambiguity in the Regulations. On a harmonious reading of the provisions referred to above would suggest that even an Associate Professor, who is not eligible for sabbatical leave, shall be entitled to the study leave.

8. He stated that if the intention was to give study leave only to Assistant Professor, then the word "appointee" would not have been used. Instead, they would have simply used the expression Assistant Professor.

9. Further, the words in the bracket which excludes Associate Professors and Professors who have completed seven years in the service is only to indicate that Associate Professors and Professors who have completed seven years of service shall be eligible for sabbatical leave and not study leave. It follows that an Associate Professor who is not eligible for sabbatical leave as he / she does not have seven years as such shall be entitled to study leave provided, he / she is an Assistant Professor level appointee and has completed at least three years of service.

10. That apart, it was his submission that the University has consistently interpreted the provision to mean that even an Associate Professor not being eligible for sabbatical leave is eligible for study leave.

11. On the other hand, Mr. Apoorv Kurup, learned counsel for the UGC would submit that the interpretation sought to be given by Mr. Niyazi is erroneous and does not flow from a plain reading of the provisions as referred above. According to him, the petitioner's case does not fall under Regulation 8.2(iii) or Regulation 8.3(i) of the Regulations since he did not avail study leave as an Assistant Professor and he does not have the requisite number of years of service as an Associate Professor to avail sabbatical leave.

12. He lay stress on the fact that there is no provision for grant of study leave to Associate Professor under the UGC Regulations. As such the petitioner was rightly denied the grant of study leave by the University. He is within his right to avail other leaves under the Regulations.

13. According to him, the above provisions being plain and unambiguous, the same must be construed in the ordinary sense for being given full effect and the

UGC being the rule making authority and have framed the Regulations after detailed deliberations by the expert committee and are mandatory in nature, cannot be overlooked. This Court would not like to interpret in a manner other than what has been stated by the UGC in its counter affidavit.

14. In this regard, he has relied upon the judgment of the Supreme Court in the case of *Ajay Pradhan v. State of Madhya Pradesh & Ors.*, (1988) 4 SCC 514. He has also relied upon the judgment in the case of *Fuerst Day Lawson Ltd v. Jindal Exports Ltd.* (2011) 8 SCC 333 to contend that the use of round brackets for putting words in parenthesis is not very common in legislation and the same are need to be construed as an explanation or extract information separate from the main context.

15. He also relied upon the judgment in the case of *Sant Longowal Institute of Engineering and Technology and Anr. v. Suresh Chandra Verma* (2013) 10 SCC 411 to contend that the study leave granted with salary and other benefits is for the interest of the institute and also the person concerned so that once he comes back and joins the institute, the students will be benefitted by the knowledge and expertise acquired by the person at the expense of the institute. So, the study leave cannot be claimed as a matter of right. Mr. Kurup, on the two cases of Associate Professors on which reliance has been placed by Mr. Niyazi, would contend that these are solitary cases of grant of study leave, one by University and other by the concerned College contrary to the Regulations. Otherwise, it is clear in all the Universities / Colleges that the Associate Professors / Professors are not entitled to study leave.

16. Mr. Mohinder J.S. Rupal, learned Counsel appearing for the respondent No.1 / University stated that the University has, pursuant to the request made by the petitioner, sought clarification from the UGC whether an Associate Professor / Professor can be considered for grant of study leave. The UGC vide its letter dated July 30, 2021 has clearly stated that an Associate Professor is not entitled to be granted study leave in view of Regulation 8.2(iii). It is in view of the clarification given by the UGC that the University vide its communication dated August 23, 2021 rejected the request of the petitioner. Concedingly, the said letter has not been challenged by the petitioner in these proceedings. He relied upon the judgment in the case of *Uma Kant and Ors. v. Bhika Lal Jain and Ors.*, (1992) 1 SCC 105 in support of his submission that in matters relating to educational institutions, if two interpretations are possible, the Court would be reluctant to accept the interpretation, which would upset the settled position.

17. He also relied upon the Judgment of the Supreme Court in the case of *Dozco India P. Ltd. v. Doosan Infracore Co. Ltd.* (2011) 6 SCC 179 to contend that the bracketed portion cannot control the main clause. It is only for the purpose of further explanation. He also relied upon the Judgment of the Coordinate Bench of this Court in the case of *Chaman Kumar v. University of Delhi and Ors.*, (2012) SCC Online Del 4734, with regard to the objective for providing a provision for study leave, which cannot be taken as a matter of right.

18. Having heard the learned counsels for the parties and perused the record, the issue which arises for consideration is whether the stand of the UGC in its letter dated July 30, 2021 to the University in the following manner, resulting in the denial of the study leave, is justified:

"xxx xxx xxx

Subject: Clarification regarding study leave for entry level appointment as per UGC Regulations, 2018

Sir,

With reference to your letter No. Estab (T)/V/001/Phy. dated 6th July, 2021 on the subject cited above; I am directed to inform you that as per clause 8.2(III) (Study Leave) and 8.3 (Sabbatical Leave); study leave is permissible after completing of 3 years of service at the entry level as Assistant Professor / Assistant Librarian / Assistant Director of Physical Education and Sport / College DPE & whereas Sabbatical Level is permissible only after completing 7 years as a Readers / Associate Professors / Professors.

xxx xxx xxx"

Suffice to state that the University based on the above letter of the UGC has vide its letter dated August 23, 2021 rejected the request of the petitioner for grant of study leave.

19. The submission of Mr. Niyazi is, an Associate Professor, whose entry-level post is Assistant Professor and who is not eligible for sabbatical leave, having less than seven years of service as Associate Professor, is entitled to study leave. It is his submission that till such time an Associate Professor gets the eligibility for sabbatical leave, he / she is eligible for study leave. This submission of Mr. Niyazi is not appealing. The Regulation 8.2 (iii) as referred above states that "the study leave shall be granted to an entry-level appointee as Assistant Professor xxxx (other than Associate Professor or Professor xxx)". The entry-level means the first available post in the cadre. Though an Associate Professor / Professor can also be appointed laterally from open market / direct recruitment, they are not entry-level posts. It was the endeavour of Mr. Niyazi to draw a distinction between an Associate Professor, who was initially appointed as Assistant Professor and later promoted as an Associate Professor and an Associate Professor who had joined the University as a direct recruit. He stated that in the former case, the Associate Professor shall be entitled to study leave, but in the latter case, he shall be entitled to sabbatical leave that too after 7 years. I am afraid, such a distinction cannot be accepted as the same is not contemplated in the Regulations. An Associate Professor cannot be classified or segregated for grant of study leave based on the nature of recruitment / appointment, i.e., promotion / direct recruitment.

20. Further if the submission of Mr. Niyazi is accepted then it would also imply that even a Professor whose entry-level post is Assistant Professor shall also be

eligible for the study leave, if he does not have seven years of service as Professor. This I say so because the ineligibility for the study leave is for both the Associate Professor and Professor under Regulation 8.2 (iii). Further, the Regulation 8.3 (i) state that the permanent whole-time teachers of the University and Colleges who have completed seven years of service as a Reader / Associate Professor or a Professor may be granted sabbatical leave. The requirement of seven years is as an Associate Professor or Professor (not combined) which means on the post concerned. It follows an Associate Professor, having seven years shall not be eligible for study leave but a Professor who has just been promoted not having seven years of service, shall be eligible for study leave.

21. No doubt an Associate Professor / Professor with less than 7 years of service shall neither be eligible for study leave nor the sabbatical leave, but if the plea of Mr. Niyazi is accepted then it shall mean that an Associate Professor and Professor shall get the benefit of both study leave and sabbatical leave. The intention of the rule making authority is clear, (1) that the Assistant Professor shall be entitled to study leave on completion of three years of service; (2) the Associate Professor or Professor shall be entitled to sabbatical leave on completion of seven years of service on the post concerned. There is no third eventuality. The Regulation intends to fix a requirement of minimum period, for an Assistant Professor / Associate Professor / Professor to have / possess, on the post before he / she can avail the benefit of study leave or sabbatical leave, as the case may be. It is a cardinal principle of interpretation of statute that words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity and unless there is something in the context or in object of statute to suggest to the contrary. In *Raghuveer Singh Saxena v. United India Insurance Co. Ltd. and Ors.*, 2014 (3) SLR 737 it was observed by the High Court of Rajasthan as follows: -

"34. It is a well known rule of construction that provisions of a statute must be construed so as to give them a sensible meaning. The legislature expects the Courts to observe the maxim *ut res magis valeat quam pereat*, which means it is better for a thing to have effect than to be made void. If a statute gives rise to obstacles in implementation, it is obviously desirable from the Court to do its best to find ways of overcoming those obstacles so as to avoid absurd results. It is a well settled principle of interpretation of statutes that a construction should not be put on a statutory provision, which would lead to manifest absurdity, futility, palpable injustice and absurd inconvenience, or anomaly. Elaborating the purpose of interpretation with full emphasis, this Court feels that precisely the purpose of interpretation is to give effect to the intention underlying the statute, and therefore, unless the grammatical construction leads to absurdity, it is safe to give words their natural meaning, because the framer has presumed to use the language which conveys the intention."

22. Further, it is not for this Court to go into the reasons nor into the aspect in

what manner Regulations need to be framed. It is for the experts to decide.

23. I find one more reason to read the provision in the manner sought to be read by the UGC. In the Regulations of 2010, the provision of study leave reads as under:

"Study leave may be granted for the entry level appointees as Assistant Professor/Assistant Librarian / Assistant Director of Physical Education and Sports/College DPE&S after a minimum of three years of continuous service, to pursue a special line of study or research directly related to his / her work in the University or to make a special study of the various aspects of University organization and methods of education."

The bracketed portion of the Regulations as noted above were included by way of revised guidelines in the year 2013 as under:

"Study leave may be granted to entry level appointees as Assistant Professor / Assistant Librarian / Assistant Director for Physical Education and Sports / College DPE&S (other than an Associate Professor or Professor of a University/ College/ Institution, who is otherwise eligible for sabbatical leave) after an minimum of 3 years of continuous service, to pursue a special line of study or research directly related to his / her work in the University/College/ Institution or to make a special study of various aspects of university organization and methods of education giving full plan of work."

24. The position of 2013 is maintained in the Regulations of 2018. It is clear that the bracketed portion was included in the revised guidelines of 2013 with a view to bring clarity to its earlier Regulations of 2010, i.e., study leave shall be granted to entry-level appointee as Assistant Professor to the exclusion of Associate Professor / Professor who are otherwise eligible for sabbatical leave on completion of seven years of service. Mr. Rupal is justified by relying on the Judgment of the Supreme Court in Dozco (supra) in stating that the bracketed portion of the Regulation is only for the purpose of further explanation and cannot control the main Regulation of 8.2 (iii). The language of the bracketed portion is clearly indicative of express exclusion of Associate Professors / Professors from the ambit of study leave.

25. The plea of Mr. Niyazi by relying upon the Hindi script of the Regulations to contend that the intention of the rule making authority is clear to give the benefit of study leave to an Associate Professor is unmerited in view of my conclusion above. No doubt, the Hindi script of the Regulations is part of the original Regulations notified by the UGC, but the script of the Regulations in English leaves no manner of doubt of the intention of the rule making authority.

26. The reliance placed by Mr. Niyazi on Regulation 8.3 (ii) to contend that the Regulation uses the word "Teacher" which may include Assistant Professor / Associate Professor / Professor, who having availed study leave would not be entitled to sabbatical leave until expiry of 5 years from the date of teacher's

return from previous study leave, which period being less than seven years also fortifies, his submission that an Associate Professor is eligible for study leave, is unmerited. The provision cannot be read in isolation. It has to be read along with the main provision in the Regulations, i.e., Regulation 8.3 (i). The provision relied upon is only relevant to the extent that an Assistant Professor, who while availing the study leave, was promoted as an Associate Professor on his joining, but from a back date, shall not be eligible for sabbatical leave for a period of five years. No other interpretation can be given to the said provision. The Regulation need to be interpreted in such a way, to ensure, the intent behind the Regulations is given effect to.

27. Further, this Court is of the view that it shall not be appropriate to sit in appeal over the decision of an expert academic body such as the UGC, unless the Regulation is inherently arbitrary, discriminatory or ultra vires the law. In this regard, I may refer to the decision in *University Grants Commission and Ors. v. Neha Anil Bobde (Gadekar)*, (2013) 10 SCC 519, wherein the Supreme Court has observed as under:

"29. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the Regulations or the Notification issued, the Courts shall keep their hands off since those issues fall within the domain of the experts. This Court in *University of Mysore v. C.D. Govinda Rao* MANU/SC/0268/1963 : AIR 1965 SC 491, *Tariq Islam v. Aligarh Muslim University* MANU/SC/0623/2001 : (2001) 8 SCC 546 and *Rajbir Singh Dalal v. Chaudhary Devi Lal University* MANU/SC/7924/2008 : (2008) 9 SCC 284, has taken the view that the Court shall not generally sit in appeal over the opinion expressed by expert academic bodies and normally it is wise and safe for the Courts to leave the decision of academic experts who are more familiar with the problem they face, than the Courts generally are. UGC as an expert body has been entrusted with the duty to take steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in the University. For attaining the said standards, it is open to the UGC to lay down any "qualifying criteria", which has a rational nexus to the object to be achieved, that is for maintenance of standards of teaching, examination and research. Candidates declared eligible for lectureship may be considered for appointment as Assistant Professors in Universities and colleges and the standard of such a teaching faculty has a direct nexus with the maintenance of standards of education to be imparted to the students of the universities and colleges. UGC has only implemented the opinion of the Experts by laying down the qualifying criteria, which cannot be considered as arbitrary, illegal or discriminatory or violative of Article 14 of the Constitution of India."

28. The reliance placed by Mr. Niyazi on the cases wherein the University / College have granted study leave to Associate Professors is misplaced. Firstly, the case of Dr. Shyama Rath is a case of extension of study leave. It is not known whether she was given the study leave while working as Assistant

Professor or Associate Professor. No reliance can be placed on the document filed on record as this aspect has not been clarified by Mr. Niyazi. Similar is the position with regard to Ms. Sunita Jetly. The reference made of two more cases is / are not supported by any document, hence cannot be considered. Further, they cannot be relied upon to construe the intent of Regulations as noted above. In any case, Regulations for study leave as exist today are in place since 2013 and the submission of Mr. Kurup that except the above cases, no other case has been pointed by Mr. Niyazi is appealing. That apart, in view of my conclusion above, the grant of study leave to Associate Professors, cannot be justified. In any case, assuming two interpretations are possible, the Supreme Court in the case of Uma Kant (supra) as relied upon by Mr. Kurup held that where two interpretations are possible, the Court would ordinarily be reluctant to accept that interpretation which would upset or reverse the long course of action and decision taken by such educational authorities.

29. In view of my above discussion, I do not find any merit in the petition. The same is dismissed.

CM APPL. 24630/2021

Dismissed as infructuous.