

(2018) 07 CHH CK 0090
In the Chhattisgarh High Court
Case No : WA No. 101 of 2018

Ganesh Prasad Shukla

APPELLANT

Vs

Guru Ghasi Das Central University Bilaspur

RESPONDENT

Date of Decision : 06-07-2018

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2018) 07 CHH CK 0090

Hon'ble Judges : PRASHANT KUMAR MISHRA, J; RAM PRASANNA SHARMA, J

Bench : Division Bench

Advocate : Mateen Siddiqui,, Vijay Kumar Shukla

Final Decision : Allowed

Judgement

1. Appellant's writ petition seeking quashment of the order dated 22-12-2017 passed by the Registrar, Guru Ghasidas Central University, Bilaspur

(henceforth 'the University') has been dismissed by the learned Single Judge. By the subject order of the University, appellant's application seeking

study leave for prosecuting Ph.D. course in the Indian Institute of Technology, Bombay (henceforth 'the IIT, Bombay') was disallowed by the

University.

2. For the sake of convenience, the documents referred and relied upon in the writ petition, shall be referred in the instant appeal.

3. Appellant joined as Assistant Professor (Department of Industrial & Production Engineering) in the respondent University on 19-8-2011 pursuant to

the appointment order dated 20-7-2011 (Annexure â?" P/2). His services were regularised w.e.f. 19-8-2013 vide order dated 28-1-2014 (Annexure

â?" P/3). The University issued minutes of meeting held on 24-5-2014 prescribing norms for grant of study leave.

4. The All India Council for Technical Education (henceforth 'AICTE') issued a programme for admission for Quality Improvement Programme

(henceforth 'QIP') for Teachers of Engineering Institution. The relevant part of the scheme is reproduced hereunder :

â??V. ADVANCE ADMISSION SCHEME:

As per the advance admission scheme for Ph.D degree programme under QIP, a candidate will receive admission during 2016-2017 session to the

Pre-Ph.D. programme and on successful completion of this programme, he will be offered admission to the regular Ph.D. programme during 2017-

2018. During the one year period of the Ph.D. program, the candidate is required to make maximum of four visits to the institution (to which he/she is

offered admission) for a total period of sixty days, to decide on the area of research, to identify guide, and to start Preliminary work. During this

period, the candidate is to be treated as on deputation by the sponsoring institution. TA/DA as per AICTE norms for the visits would be borne by the

Institute where the admission is offered, subject to the receipt of the grants from the AICTE. The question of final offer for admission will be

considered during May-July 2017, based on the performance of the candidate during the period of the advance admission.â??

5. Appellant moved an application for permission to apply for advance admission to the Ph.D. programme on 18-9-2015 (Annexure â?" P/6) and has

also applied for the QIP advance admission. With his application form, the appellant had submitted a certificate and forwarding note by the Principal

of the Institution in which it was mentioned that the appellant will be relieved full time for the programme on deputation and will be paid full salary and

allowances during the tenure of sponsorship, if selected for admission. A No Objection Certificate (NOC) was also issued by the University on 28-10-

2015 (Annexure â?" P/8) and his application was also forwarded by the Registrar to the QIP Coordinator, IIT, Bombay. The appellant was selected

for Ph.D. programme of IIT, Bombay, vide communication dated 6-6-2016 (Annexure â?" P/10). Appellant was placed at S.No.11 of the admission

list released by the IIT, Bombay.

6. The Registrar of the University thereafter issued an order on 24-6-2016 (Annexure â?" P/12) in form of certificate of sponsorship for admission

under QIP, inter alia, mentioning that the appellant's name is sponsored to join

Ph.D. in IIT, Bombay for three years and his services shall be treated on deputation and the salary and allowance will be paid to him. As per the QIP programme, the appellant was required to visit IIT, Bombay for the required number of occasions. For his first visit the University sanctioned leave from 4-7-2016 to 22-7-2016; thereafter for second visit from 1-11-2016 to 18-11-2016; and for third visit from 15-12-2016 to 4-1-2017. The IIT, Bombay admitted the appellant for final Ph.D. programme vide its communication dated 12-5-2017 (Annexure â?" P/16) mentioning that session will begin from 17-7-2017. Copy of this letter was also sent to the Principal, Institute of Technology of the respondent University. Appellant also informed the University on 15-5-2017 (Annexure â?" P/17) about the admission allowed by the IIT, Bombay. Appellant's Guide namely; Prof. Gajendra K. Adil also sent an e-mail to the Vice Chancellor of the respondent University making a request to grant study leave in favour of the appellant. When leave was not sanctioned before the last date i.e. 13-7-2017, appellant moved an application on 18-7-2017 before the IIT, Bombay, for extension of time, which was granted on 25-7-2017 (Annexure â?" P/20) allowing him to join Spring Semester 2017-18 commencing from 1-1-2018. The University issued an order dated 13-7-2017 refusing appellant's request for study leave. On 14-7-2017 (Annexure â?" P/22) the NOC issued in appellant's favour on 15-4-2017 was cancelled.

7. The order dated 13-7-2017 was challenged by the appellant by preferring WPS No.4246 of 2017, which was allowed on 15-12-2017 (Annexure â?" P/27) and the matter was remitted back to the competent authority of the University to consider the appellant's application afresh for grant of study leave within seven days from 18-12-2017 strictly in accordance with law by passing a reasoned and speaking order keeping in view the applicable rules, regulations, bye-laws, ordinances and notifications of the University in this regard.

8. After the order passed by the learned Single Judge in appellant's first writ petition, his representation was considered by the School Board for School of Studies in Engineering & Technology (henceforth 'the School Board') on 21-12-2017. On the said date, the School Board observed that since appellant's application is old case, much earlier than the date of constitution of the Board on 18-12-2017, the administrative decision in respect of

appellant's representation may be taken by the competent authority of the University, however, the same committee again held its meeting on 22-12-

2017 and decided to reject the appellant's application for grant of study leave under QIP.

9. According to the appellant, the norms for sanction of study leave has been settled by the committee appointed by the Executive Council (henceforth

'the EC') vide Annexure â?" P/4 dated 15-4-2015 which was applicable at the time of moving of application by the appellant, therefore, the School

Board of the University has wrongly rejected the application without properly appreciating and applying the formula.

10. According to the respondents, the School Board has considered the interest of the students, the financial burden and shortage of faculty to reject

the appellant's application for grant of study leave.

11. The learned Single Judge has dismissed the writ petition mainly for the reason that leave cannot be granted as a matter of right and secondly the

University having devised its internal mechanism for grant of study leave, the issue has rightly been considered on the basis of exigencies of service

and further that even the internal mechanism of the University will not create any legal and enforceable right in favour of the appellant.

12. It is argued for the appellant that even if the study leave cannot be claimed as a matter of right, the consideration has to be made uniformly for all

the candidates and the University cannot apply pick and choose method while granting leave. It is argued that when a formula has been evolved and

the University has considered the appellant's case on the basis of the formula devised by the University, the decision has to satisfy the pre- requisites

of the formula and any deviation or wrong application or perverse application would give rise to violation of Article 14 of the Constitution of India,

which has not been appreciated.

13. It is also argued that having allowed sponsorship and NOC in favour of the appellant and having sanctioned leave on at least three occasions for

attending pre-admission QIP programme on the basis of which the appellant has been granted admission by the IIT, Bombay, it is too late for the

University to reject the application for study leave.

14. Learned counsel for the respondent University has argued that there is shortage of faculty in the University, therefore, the administrative decision

in respect of academic matters has to be respected.

15. The norms fixed by the committee constituted by the EC of the University provides as under :

3. Grant of study leave (including QIP leave) shall be subject to over all filled up faculty position in the concerned department. In each academic

session, at the time of processing of application, the number of teachers considered for granting the study leave (including QIP leave) shall not exceed

10% of the available regular faculty strength in the department. Any fraction in this figure equal to or greater than 0.5, thus arrived at being rounded

off to the next integer (For example, in a department if : available regular faculty strength = 5, 10% of 5=0.50; which is rounded off to an integer i.e.

1.0, that means, total regular faculty members that can be granted the study leave (including QIP leave) in an academic session of the department

shall be 1.0)

4. Seniority shall be given due priority in the department if there are more number of applicants from a department satisfying the above conditions. The

seniority will based on the official seniority list provided by the university. A senior faculty member of the department can be given chance to apply for

study leave (including QIP leave) for maximum of an academic session, and in case this senior faculty member does not qualify for taking admission

for enhancing his/her academic qualification in an academic session as above, then he/she can claim for availing the study leave (including QIP leave)

after every eligible faculty members have availed their one chance as above.

16. In the order Annexure â?" P/1 the University has referred to the criteria for sanctioning study leave drawn by the committee appointed by the EC

mentioning that if total available strength/ faculty of Department of Industrial & Production Engineering is 8 and the 10% of the existing faculty

strength is 0.8 which is equal and rounded as 1 and since 1 faculty namely; Shri Atul Kumar Sahu has already been allowed study leave in the last

session after the above rules came into force on 15-4-2015 (as is apparent from Annexure â?" A/2 & A/3 of I.A.No.3 dated 11-5-2018), presently, as

per the rules, no faculty member can be granted study leave because if study leave is given to any one faculty it will exceed 10% of the ceiling limit.

17. It appears the University has wrongly construed the criteria laid down by the committee on 15-4-2015 (Annexure â?" P/4), which provides that in

each academic session, at the time of processing of application, the number of teachers considered for granting the study leave (including QIP leave)

shall not exceed 10% of the available regular faculty strength in the department and further that any fraction in this figure equal to or greater than 0.5,

thus arrived at will be rounded off to next higher integer.

18. By way of illustration, it is mentioned in the norms itself that if in a department available regular faculty strength is 5, $10\% \text{ of } 5 = 0.50$, which is

rounded off to an integer i.e. 1.0, that means, total regular faculty members that can be granted the study leave (including QIP leave) in an academic

session of the department shall be 1.0. Therefore, since, as per Annexure â" P/1 the available faculty strength was 8, applying the University's own

illustration, $10\% \text{ of } 8$ would be 0.80 which is required to be rounded off to the next higher integer i.e. 1.0 and 1 faculty can be allowed study leave in

the academic session 2017-18 for which the petitioner had applied.

19. It is important to bear in mind that another faculty member Shri Atul Kumar Sahu has been granted study leave for the session 2016-17 and

according to the petitioner's counsel he will complete his course in July, 2018. This statement has not been contested by the respondent at the time of

hearing.

20. It is also to be seen that the University Grants Commission (henceforth 'the UGC') has framed regulation on minimum qualifications for

appointment of teachers and other academic staff in Universities vide Annexure â" P/24 in which para 8.2 deals with study leave mentioning that

study leave should be allowed at the entry level for acquiring higher qualification like Ph.D. and candidates should be encouraged to acquire these

qualifications in the relevant disciplines at the earliest rather than at a later stage of the career. Thus, the UGC also encourages obtaining of higher

qualification by availing study leave.

21. In the matter of Deepak Kumar Rathore v Gurughasidas Vishwavidyalaya, Bilaspur (WPS No.3159 of 2017 decided on 19-7-2017) this Court

quashed the decision of the University for canceling the No Objection Certificate for availing study leave granted to the said candidate. By writ appeal

the order passed by the learned Single Judge was maintained quashing the order only in respect of the said petitioner clearly observing in para 9 in the

writ appeal order that at the time of grant of NOC the University had knowledge

about the alleged shortage of teachers and despite it, NOC was issued and the said candidate was sponsored. As observed in the later part of this paragraph the Division Bench has noted that the candidate had applied for permission to join Ph.D. course for the session July, 2017, which has been approved by the IIT, Guwahati with further observation in para 11 that due to the order impugned in the writ petition the respondent's promotional interest has been materially affected. It has created a lot of problems to the candidate in pursuing the Ph.D. course.

22. The case of the present appellant Ganesh Prasad Shukla is a mirror image on facts with which the Division Bench of this Court has dealt with in the matter of Deepak Kumar Rathore (supra). The appellant was also allowed NOC, sponsorship and leave for attending the pre-admission QIP session and has, thereafter, been declared successful by IIT, Bombay for admission to the Ph.D. course and during all relevant stages the respondent University was aware of shortage of faculty, if any. The reason showing shortage of faculty is mentioned at the last part of the order, however, once the appellant's case fits in the norms for grant of study leave, the same has to be accepted as under the same norms Shri Atul Kumar Sahu has already been granted study leave and Deepak Kumar Rathore's case (supra) has been allowed by this Court, which has been affirmed by the Supreme Court by order dated 28-3-2018 passed in Special Leave to Appeal (C) No.7557 of 2018.

23. Since in the same facts and circumstances of the case, Deepak Kumar Rathore has been granted study leave by this Court and the said order has been affirmed by the Supreme Court, we are of the considered view that if the appellant is refused study leave he will be deprived to pursue his Ph.D. course for which at all material time the University had agreed while issuing NOC and sponsorship. Rejection of his application at a later stage appears to be an afterthought despite the fact that under the norms allowed by the University the appellant is entitled for study leave.

24. For the foregoing, the writ appeal is allowed and the impugned order passed in the writ petition and the order dated 22-12-2017 of the University refusing study leave to the appellant is quashed.

25. Consequently, the appellant shall be treated to have been granted study leave for prosecuting Ph.D. course in IIT, Bombay, for which the

University shall complete all the required formalities within time so that the appellant succeeds in getting admission for the Ph.D. course, which is likely to commence very shortly in July, 2018 itself, as informed by the petitioner's counsel at the time of hearing.

26. As an upshot, the writ appeal is allowed. No order as to cost(s).