
(2018) 02 CHH CK 0001
In the Chhattisgarh High Court
Case No : 92 of 2018

Ganesh Prasad Shukla

APPELLANT

Vs

Guru Ghasidas Central University Bilaspur & Ors

RESPONDENT

Date of Decision : 05-02-2018

Acts Referred:

Citation : (2018) 02 CHH CK 0001

Hon'ble Judges : Sanjay K. Agrawal

Bench : Single Bench

Advocate : Mateen Siddiqui, Vijay Kumar Shukla, Rajnish Singh Baghel

Final Decision : Dismissed

Judgement

1. The petitioner is an Assistant Professor working in the Department of Industrial & Production Engineering in the respondent University. He applied to the competent authority for permission to get admission to undergo Ph.D. Programme under 2016-17 (final admission 2017-18) as per the All India Council for Technical Education (AICTE) Programme for admission under the Quality Improvement Programme (QIP) for teachers of Engineering institution and accordingly, no objection certificate was issued in favour of the petitioner on 28.10.2015 and the petitioner was selected for Pre-Ph.D Programme of IIT, Mumbai on 06.06.2016. He again applied for Ph.D. under the QIP and leave was sanctioned to him on 24.06.2016 from 04.07.2016 to 22.07.2016 and necessary certificate was issued. The petitioner applied for second leave on 19.09.2016 which was granted by the University on 24.10.2016 from 01.11.2016 to 18.11.2016 for second visit and third leave was also sanctioned by the University authorities from 15.12.2016 to 04.01.2017. Now, on the basis of application submitted by the petitioner, IIT, Mumbai has granted permission to the petitioner on 25.07.2017 to join Spring Semester 2017- 18 commencing from 01.01.2018 and accordingly, the petitioner applied for grant of leave which was rejected by order dated 13.07.2017 (Annexure - P/21) stating that in the present circumstances of ongoing teaching programmes and lack of availability of

teachers in the department, the request for study leave cannot be accepted.

2. The petitioner challenged above-stated order in WPS No. 4246/2017 before this Court and that writ petition was allowed by this Court by order dated 15.12.2017 with the following directions :- "5. A careful perusal of the order dated 13.7.2017 would show that the petitioner's application has been rejected only in light of ongoing teaching programmes and lack of availability of teachers in the department, whereas the same was required to be considered as per the minutes of meeting/ recommendation dated 17.12.2014 by the appropriate committee filed along with office memo dated 15.04.2015. Entitlement of the petitioner has to be considered in accordance with the said recommendations by the competent committee, whether the petitioner falls within 10% of the available regular faculty strength in the Department or not. No such reasoned and speaking order has been passed in terms of the recommendations of the said committee. The impugned order clearly smacks complete non-application of mind and it has been rejected by a non-speaking and unreasoned order. It is correct to say that the respondent University cannot supplement the reason which they have not assigned in the order impugned while supporting the order impugned.

6. In view of that, the impugned order dated 13.07.2017 (Annexure - P/30) is quashed and the matter is remitted to the competent authority of the University to consider the petitioner'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. The petitioner is at liberty to appear before the competent authority on 18.12.2017 and make a representation along with additional material and that will be considered and decided within seven days, as stated above, without being prejudiced by any observations made hereinabove."

3. Thereafter, the petitioner made representation to the University as directed and University referred the matter to the School Board of University. The School Board of University considered the matter after hearing the petitioner and made observations and recommendations to reject the application of the petitioner and the competent authority accepted the recommendation of School Board and petitioner's application for grant of study leave was rejected, against which this writ petition has been preferred questioning the said order as arbitrary and unsustainable in law.

4. Mr. Mateen Siddiqui, learned counsel for the petitioner would submit that the order passed by the respondent University is contrary to Para 3 of the minutes of meeting dated 17.12.2014 as, on that date, the total available regular faculty strength is 7 and 10% of that would be equal to 1 and, therefore, the petitioner is entitled for privilege of study leave and his application for study leave has been rejected on untenable grounds.

5. Mr. V. K. Shukla, learned counsel appearing for the respondent - University would oppose the submissions of learned counsel for the petitioner and submits that in over all interest of University and interest of the students such a decision has been taken and further submits that study leave is not a right of the petitioner and as such his application has rightly been rejected.

6. I have heard learned counsel for the parties and considered their rival submissions and also gone through the material available on record with utmost circumspection.

7. In compliance of the order of this Court, the University considered the matter and thereafter the matter was referred to the School Board for School of Studies of Engineering and Technology on 22.12.2017 and said Board made following observations and recommendations :- "According to point No. 3 of the rule passed by Executive Council and subsequently notified by the University vide OM No. 90/Admn/Estt/2015 dated 15.04.2015, a total available strength / faculty of Department of Industrial and Production Engineering is 8. The 10% of the existing faculty strength is 0.8 which is equal and rounded as 1. The School Board has also been informed by the I/c. HoD of the Department of Industrial and Production Engineering that one faculty was already given study leave in last session after the above rules come into force on 15.04.2015. Prima facie, as per the rules "no faculty member can be given study leave, because if study leave is given to any one faculty it will exceed 10% of the ceiling limit according to the above analysis of the entire case, hence, the application / representation of Shri G.P. Shukla deserves to be rejected."

In view of the above, in the interest of the students and University, additional involvement of financial burden on the part of the University and currently shortage of faculty members in the department, the School Board hereby does not recommend the representation of Shri Ganesh Prasad Shukla for grant of study leave under QIP from Session 2017-18."

The recommendation has been accepted by competent authority of the University on 22.12.2017 and it was informed to the petitioner, which has been questioned in this writ petition.

8. It is trite law that leave cannot be claimed as a matter of right and when exigencies of public service so demand, leave of any description may be refused or revoked by the competent authority.

9. In the matter of Horace Ross v. State Government of Madhya Pradesh and Others, AIR 1960 MP 252 an IPS officer having earned leave of 620 days in his credit, claimed that leave as a matter of right holding the earned leave to be his property, but sanctioning authority granted leave of only 64 days, that was challenged by the said officer by way of writ petition in which the Division Bench of the M.P. High Court has held as under :- " It is obvious from these rules that leave cannot be claimed as of right and that, when it is refused even pending retirement, the Government has a discretion to subsequently disallow it either

wholly or in part. We think that these leave rules merely give to the Government a discretionary power to confer certain benefits or privileges. They do not create in favour of the Government Servant any legal right. That being so, no legal action can be maintained to enforce the alleged right to leave claimed to have been earned."

10. It is also well settled law that grant of leave including study leave is not a right of any employee or the University servant, it is the privilege to be extended to the member employee depending upon the facts and circumstances of the case and it cannot be claimed by any employee or University servant as a matter of right. At this stage, the decision of Delhi High Court in the case of Chaman Kumar v. University of Delhi, 2012 SCC OnLine Del 4734 may be noticed herein pertinently in which the Division Bench of Delhi High Court has considered and laid down criteria for granting study leave and held as under :- "20. 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 wither 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 no 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."

11. The petitioner is claiming the study leave as a matter of right relying upon record of minutes of meeting dated 17.12.2014 of the committee constituted by the Executive Council of the University and subsequently notified. It is neither a statue nor having force of law or ordinance or regulation. The University, in order to regulate the grant of study leave to the University officers / teachers, has

devised its own internal mechanism, so that the application for study leave can be considered properly and be granted as the exigencies of service may require. But that internal mechanism devised by University will not create any legal and enforceable right in favour of any officer of university to claim that study leave as a matter of right.

12. Following the principles of laid down by the Delhi High Court in Chaman Kumar (supra), if the facts of the present case are examined, it is quite vivid that though at present the total available strength of Assistant Professors in the said department is 7 and petitioner is claiming study leave on the basis of memo dated 17.12.2014 which was notified subsequently, but fact remains that out of total sanctioned strength of 18 faculty members only 7 members are presently working there, as Mr. Atul Kumar Sahu, Assistant Professor is already on study leave, which is less than 50% of the strength and that the Department of Industrial Production and Engineering of the University is running short of Assistant Professors. The petitioner may or may not be eligible for study leave as per memo dated 17.12.2014, but the fact remains that the University has to look into and has to act according to the exigencies of the situation and particularly the best interest of the students of the University, as the University has claimed shortage of faculty members in the said department, which is apparent on record also, and only for the convenience of the petitioner for advancement of his career or for better promotional prospect, cannot be a ground to grant study leave as the welfare and best interest of students is equally important and the name and reputation of the University is also equally important which rests on the availability of regular faculty members. In view of the above facts, grant of such a leave is only a privilege to be extended by the University to its officers. It cannot be claimed as a matter of right by the petitioner. I respectfully agree with the view expressed by the Delhi High Court in the matter of Chaman Kumar (supra) and view expressed by the High Court of M.P in Horace Ross (supra) which is binding on this Court. It is for the University to manage his own affairs particularly to run the University which is a Central University constituted under the Central Universities Act, 2009 and the Court cannot sit as an Appellate Authority over the decision of the University particularly which has been taken by the School Board consisting of eminent Professor(s) and reputed Assistant Professor(s) of the Central University on the basis of material available on record.

13. As such, I do not find that the decision of the University not to grant study leave is either arbitrary, discriminatory or malafide.

14. As a fallout and consequence of the aforesaid discussion, I do not find any merit in the writ petition. The writ petition deserves to be and is accordingly dismissed. No cost(s).