
(1994) 06 GAU CK 0033
In the Gauhati High Court
Case No : Civil Rule No. 742 of 1989

Hem Chandra Deka

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 27-06-1994

Acts Referred:

Assam Study Leave Rules, 1963 — Rule 3
Gauhati University Leave Rules, 1966 — Rule 13, 13(1)

Citation : (1995) 2 GLR 171

Hon'ble Judges : M. Sharma, J

Bench : Single Bench

Advocate : R.P. Sarma, for the Appellant; None appeared, for the Respondent

Final Decision : Dismissed

Judgement

M. Sharma, J.—This writ petition has been preferred by the Petitioner for a direction to treat his extraordinary leave as study leave in acquiring M.Phil Degree in North Eastern Hills University, Shillong.

2. Petitioner has been serving as the Head of the Department of Education in Pub Kamrup College, Baihata Chariali wherein he joined in the year 1975 as Lecturer, The said college, at the relevant time was running as Deficit Grant in system directly under the control and supervision of the Govt. of Assam through a Governing Body as per statutory rules - The Assam Aided College Management Rules, 1976, framed under notification No. ECL. 11/76/20 dated November 10, 1976 as amended in exercise of power conferred on the State Government by Gauhati University/Dibrugarh University Acts of 1947/1965 (Assam Acts XVI of 1947 and Assam Act VIII of 1965).

3. Vide letter No. ECU 118/75/115 dated August 28, 1975 the State Government instructed the teaching staff of the college to equip with and acquire for themselves new higher educational qualification of post graduate standard with a view to attain educational cum teaching proficiency as per standard laid down by

the University Grants Commission. The Govt. of Assam did not make any positive arrangement in this regard and did not offer any financial assistance to the Lecturers of Govt. Aided Colleges in the matter of acquiring necessary educational qualification except imposing the aforesaid condition. That the Government instruction clearly indicated that non acquiring of requisite qualification will be visited by permanent stagnation in the scale after 5 years which means that prospect of all future promote on to higher posts would be barred.

4. In pursuance to this instruction the Petitioner applied on 25.10.80 for grant of study leave for one year from 4.11.80 to 3.11.81 to prosecute higher studies to obtain M.Phil degree from North Eastern Hill University, Shillong. Petitioner applied for study leave to the Principal in charge of the college but the Principal in charge granted extraordinary leave without pay for one year subject to approval of the Governing Body of the College. As the Petitioner was granted extraordinary leave without pay, the pay and allowances normally due to the Petitioner were not drawn by the college during the said period of leave from the Government for disbursement vide letter No. G(A) AC. 6/82/49 dated 22.5.85 (Annexure - A to the writ petition). Petitioner had to leave for study as all the arrangements had already been made for his study in the said University. By resolution dated 25.12.80 the Governing Body of the college approved Petitioner's extraordinary leave without pay. After completion of his higher study Petitioner joined the said college and till today he is working there. But inspite of repeated representations his extraordinary leave for higher study has not been converted to study leave for which the Petitioner has been financially prejudiced. Petitioner's prayer for regularisation of his extraordinary leave to study leave has been refused by the Respondent on the ground that there is no provision in the Assam Aided College Employees Rules, 1960 and therefore he is not entitled to pay and other allowances for the period. Being aggrieved Petitioner filed Writ petition before this Court.

5. Heard Mr. R.P. Sarma, learned Counsel for the Petitioner. None appeared for the Government and no affidavit has been filed countering the allegations of the writ Petitioner.

6. Mr R.P. Sarma, learned Counsel for the Petitioner has submitted that in the absence of specific rules for the teachers of Aided Colleges regarding study leave under Assam Study Leave Rules, 1963, which is applicable to the Govt. employees, officers/teachers, should have also been applied, for the end of natural justice, in the case of the teachers of Aided Colleges like the Petitioner and Petitioner should not have been discriminated. In para 23 of the writ petition the Petitioner simply stated that in similar other colleges including Aided Colleges teaching staff have been granted leave with pay for higher studies. But no specific example has been given by the Petitioner. Admittedly Rules relating to the Aided Colleges in Assam makes no provision for study leave with pay and other allowances. The leave rules relating to the employees except menials

provides for casual leave, earned leave, half pay leave and maternity leave only. The teachers in Govt. Aided Colleges are not government employees and they are governed by the Assam Aided College Management Rules amended from time to time. Rule 13(1)(a) of the Gauhati University leave Rules, 1966 provides that study leave may be granted only when the interest of the University or of a department of the University or a constituent college so requires". The benefit of this rule is not applicable to the Petitioner. FR 84 of Fundamental Rules and Subsidiary Rules to which also the Petitioner invokes its application provides as follows:

FR 84 - Leave may be granted to Government servants, on such terms as the State Government may by general order prescribe, to enable them to study scientific, technical or similar problems or to undergo special courses of instruction. Such leave is not debited against the leave account.

7. FR 85 provides for extraordinary leave which may be granted in special circumstances (1) when no other leave is by rule admissible, or (2) when, other leave being admissible, the Government servant concerned applies in writing for the grant of extraordinary leave. Such leave is not debited against the leave account. No leave salary is admissible during such leave. Rules for the Grant of Additional Leave to Government Servants for the study of Scientific, Technical or Similar problems, or in order to undertake Special Courses of Instruction has been dealt in APPENDIX -15 PART -I (FR 84) of the Fundamental Rules made by the State Government under which "Assam Study Leave Rules, 1963" has been framed. Rule 3 of the said Rules, 1963 provides as follows:

3. Conditions for the grant of study leave - (1) Subject to the conditions prescribed in these rules, study leave may be granted to a Government servant, in or out of India, with due regard to the exigencies of public service, to enable him to undergo a special course of study consisting of higher studies, or specialised training in a professional or a technical subject, having a direct and close connection with the sphere of his duties or with work in the teaching line in the technical and professional subjects.

8. Upon considering the Petitioner's case it appears that Petitioner's leave for study was not meant for the exigencies of public services, to enable him to undergo a special course of study consisting of higher studies or specialised training in professional or a technical subject having a direct connection with the sphere of duties or with its work. Similar provision has also been made in rule 13 of the Gauhati University Leave Rules, 1966. Admittedly Petitioner had taken leave for his higher study to acquire higher degree for equipping himself in getting the job secured. His study was not connected with the requirements provided in rule 13 of the Gauhati University Leave Rules, 1966 nor it was connected with Rule 3 of the Assam Study Leave Rules, 1963. His leave was purely for his personal interest and it has nothing to do with the interest of the department of the college. Further Assam Aided College Employees Rules, 1960 (as amended) governs the service condition of College teachers and rules

applicable to other employees under specific rules can not be invoked to correct the lacuna of a particular Act or Rule. In view of that, the submission of Mr. Sarma, learned Counsel for the Petitioner is not sustainable.

9. in the result the writ petition is dismissed. No costs.