

(2023) 08 CHH CK 0006
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 5362 Of 2022

Lokesh Ahirwar

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 01-08-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 21A, 309
Chhattisgarh Civil Services (Leave) Rules, 2010 — Rule 6(1), 6(2), 7, 42, 42(1),
42(2), 42(2)(ii), 42(5)(i), 42(6)

Citation : (2023) 08 CHH CK 0006

Hon'ble Judges : Sanjay K. Agrawal, J; Radhakishan Agrawal, J

Bench : Division Bench

Advocate : Rajesh Kumar Kesharwani, Ashish Tiwari, Priyanka Rai Mishra,
Shashank Thakur

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J

1. The petitioner herein seeks to challenge the constitutional validity of clause (i) of sub-rule (5) of Rule 42 of the Chhattisgarh Civil Services (Leave) Rules, 2010 (for short, 'the Rules of 2010'), which provides entitlement for availing Study leave to a regular Government servant.

2. The aforesaid challenge has been made on the following factual backdrop: -

3. The petitioner was appointed as Teacher Agriculture by order dated 17-8-2021 by the Divisional Joint Director, Education Division, Raipur. Immediately thereafter, he applied for Study leave under Rule 42(5)(i) of the Rules of 2010, as prior to his appointment on the said post he was undergoing Ph.D. course, which was not decided by the competent authority leading to filing of W.P. (S)No.992/2022 in which this Court directed the competent authority to consider and dispose of his application and ultimately, by order dated 7-3-2022, the competent authority rejected his application relying upon sub-rule (5)(i) of Rule

42 of the Rules of 2010 holding that the petitioner is still undergoing probation and not completed five years of service as a regular Government servant against which, again, he filed W.P.(S) No.1750/2022 which was dismissed by order dated 15-3-2022 relying upon sub-rule (5)(i) of Rule 42 of the Rules of 2010. The writ appeal filed against order dated 15-3-2022 suffered same fate and the petitioner remained unsuccessful. Finding no way to avail study leave, he decided to file this writ petition questioning the constitutional validity of sub-rule (5)(i) of Rule 42 of the Rules of 2010 on the ground that the said rule is arbitrary and discriminatory as well as violative of Articles 14, 16 & 21-A of the Constitution of India.

4. Return has been filed on behalf of the State / respondents No.1 to 4 stating that sub-rule (5)(i) of Rule 42 of the Rules of 2010 framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India is strictly in accordance with law, it is neither violative of any fundamental right guaranteed under Articles 14, 16 & 21 of the Constitution of India nor any provisions of the Constitution and does not suffer from manifest arbitrariness. More particularly, the petitioner has availed the remedy and this Court twice examined the case of the petitioner and in view of Rule 42(5)(i) of the Rules of 2010, study leave has been declined by the competent authority and as such, the writ petition deserves to be dismissed.

5. Mr. Rajesh Kumar Kesharwani, learned counsel appearing for the petitioner, would submit that apparently, sub-rule (5)(i) of Rule 42 of the Rules of 2010 not only suffers from manifest arbitrariness, but it is discriminatory as well and is liable to be struck down as it is also violative of right to education enshrined in Article 21-A of the Constitution of India and as such, Rule 42(5)(i) of the Rules of 2010 deserves to be struck down. He relied upon the decision of the Supreme Court in the matter of Sant Longowal Institute of Engineering and Technology and another v. Suresh Chandra Verma (2013) 10 SCC 411 in support of his contention.

6. Mr. Ashish Tiwari, learned State counsel appearing for the State / respondents No.1 to 4, would submit that leave cannot be claimed as a matter of right and it can be refused assigning valid reasons, and the Government being the employer, is entitled to regulate the study leave. He would further submit that since the petitioner is still undergoing probation and he has not completed five years of service, which is the condition precedent for grant of study leave, he cannot be granted study leave and it is the prerogative of the employer to regulate the study leave and in its wisdom, the employer has conditioned the study leave subject to confirmation of regular Government servant and subject to completion of five years of Government service including the period of probation which is well within the jurisdiction and competence of the State Government and which is neither arbitrary nor violative of Articles 14, 16 & 21 of the Constitution of India, as such, the writ petition deserves to be dismissed.

7. We have heard learned counsel for the parties and considered their rival

submissions made herein-above and also went through the record with utmost circumspection.

8. The petitioner by way of this writ petition has questioned Rule 42(5)(i) of the Rules of 2010 which has been enacted by the competent authority in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India by which the competent authority has provided that study leave may be granted to a regular Government servant who has satisfactorily completed the period of probation and has rendered not less than five years' continuous service including the period of probation. The word "leave" has not been defined in the Rules of 2010.

9. In the Random House Dictionary of the English Language at p. 816, the word "leave" has been defined when used as a noun as "permission to do something, to beg leave to go elsewhere, permission to be absent as from duty", when used as a verb it means "a parting, departure, farewell".

10. In Stroud's Judicial Dictionary, Third Edition, p. 1606 when used as a verb "leave" means "going away from, depart, sail".

11. Aiyar in Law Lexicon of British India at p. 715 observes as follows :

"Leave, as a noun, permission. As a verb, according to the context or the intent with which it is employed the word may mean to abscond, to deliver, to depart, to get off, to give, to go away from, to quit."

(Quoted by their Lordships of the Supreme Court approvingly in the matter of Ras esh C. Choksi v. State of Gujarat and others (1977) 4 SCC 545.)

12. In public service, generally, leave cannot be claimed as a matter of right. It has been expressly held that no Government servant can claim leave as a right during his continuance of service and there is almost invariable recognition of the discretion of the authorities by providing that when the exigencies of public service so require leave of any kind might be refused or revoked.

13. Rule 6(1) of the Rules of 2010 also provides that leave cannot be claimed as of right and sub-rule (2) of Rule 6 provides that when the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Government servant. Rule 7 provides that a Government servant's claim to leave is regulated by the rules in force at the time the leave is applied for and granted.

14. Leave is a condition of service (see S.R. Mehrotra (Dr.) v. H.P. University 1989 (1) Serv LR 112 (HP—DB)) as in the instant case, Government servants appointed to civil services and posts in connection with the affairs of the State are concerned, they are governed by the Rules of 2010. Concept of leave in service law seems to be that it is in the nature of grant and it is not a right of a Government servant as provided in Rule 6(1) of the Rules of 2010.

15. According to Black's Law Dictionary, the word "grant" is shown to have the meanings : (i) to bestow; to confer upon someone other than the person or entity which makes the grant; (ii) to give or present as a right or privilege. (See M/s. Hajee S.V.M. Mohamed Jamaludeen Bros. & Co. v. Govt. of Tamil Nadu 1997 (3) SCC 466.)

16. Keeping in mind the aforesaid preface with regard to the nature and meaning of leave, it would be appropriate to notice the grounds on which the constitutional validity of the subordinate legislation can be struck down.

Constitutional validity: -

17. A Statute is construed so as to make it effective and operative on the principle expressed in the maxim "ut res magis valeat quam pereat". Therefore, a presumption is there that Legislature does not have jurisdiction and burden of establishing that the Act is not within the competence of the Legislature or that it transgressed other constitutional mandates, such as those relating to fundamental rights, it is always upon the person who challenges the vires. (See Principles of Statutory Interpretation by Justice G.P. Singh, 12th Edition, page 592.)

18. It is a settled principle of law that the Statute enacted by the Parliament or State Legislature cannot be declared unconstitutional lightly. The Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provisions under challenge cannot stand.

19. Thereafter, the Constitution Bench of the Supreme Court in Shayara Bano (supra) held that legislation can be struck down if it is manifestly arbitrary and manifest arbitrariness is the ground to negate legislation as well under Article 14 of the Constitution of India. It has been observed by their Lordships as under: -

"101. It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India (1985) 1 SCC 641 : 1985 SCC (Tax) 121 stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

20. Thereafter, very recently, in the matter of Dr. Jaya Thakur v. Union of India

and others 2023 SCC OnLine SC 813, it has been held by three-judge Bench of the Supreme Court that judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive by observing as under: -

"68. It could thus be seen that the role of the judiciary is to ensure that the aforesaid two organs of the State i.e. the Legislature and Executive function within the constitutional limits. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The role of this Court is limited to examine as to whether the Legislature or the Executive has acted within the powers and functions assigned under the Constitution. However, while doing so, the court must remain within its self-imposed limits."

Thereafter, relying upon its earlier judgment in the matter of *Binoy Viswam v. Union of India and others* (2017) 7 SCC 59 and reviewing its earlier decisions, the Supreme Court speaking through B.R. Gavai, J., has held that the statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly, and observed as under: -

"70. It could thus be seen that this Court has held that the statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. To do so, the Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. It has been held that unless there is flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature cannot be declared bad.

71. It has been the consistent view of this Court that legislative enactment can be struck down only on two grounds. Firstly, that the appropriate legislature does not have the competence to make the law; and secondly, that it takes away or abridges any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. It has been held that no enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. It has been held that Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom.

72. It has been held by this Court that there is one and only one ground for declaring an Act of the legislature or a provision in the Act to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. It has further been held that if two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. It has been held that the Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its

scope.

73. It has consistently been held that there is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt. It has been held that if the law which is passed is within the scope of the power conferred on a legislature and violates no restrictions on that power, the law must be upheld whatever a court may think of it.

74. It could thus be seen that the challenge to the legislative Act would be sustainable only if it is established that the legislature concerned had no legislative competence to enact on the subject it has enacted. The other ground on which the validity can be challenged is that such an enactment is in contravention of any of the fundamental rights stipulated in Part III of the Constitution or any other provision of the Constitution. Another ground as could be culled out from the recent judgments of this Court is that the validity of the legislative act can be challenged on the ground of manifest arbitrariness. However, while doing so, it will have to be remembered that the presumption is in favour of the constitutionality of a legislative enactment.”

21. Chapter VI of the Rules of 2010 provides for Study Leave. Rule 42 of the Rules of 2010 provides conditions for grant of study leave and object of study leave has been provided in clause (i) of sub-rule (2), whereas, purpose has been catalogued in clause (ii) of sub-rule (2) of Rule 42. Sub-rules (1) & (2) of Rule 42 of the Rules of 2010 state as under: -

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

(2) Study leave may also be granted -

(i) for a course of training or study tour in which a Government servant may not attend a regular academic or semi-academic course, if the course of training or the study tour is certified to be of definite advantage to Government from the point of view of public interest and is related to the sphere of duties of the Government servant; and

(ii) for the purpose of studies connected with the frame-work or back ground of public administration, subject to the conditions that -

(a) the particular study or study tour should be approved by the authority competent to sanction study leave; and

(b) the Government servant should be required to submit on his return, a full report of the work done by him while on study leave.

(iii) for the studies which may not be closely or directly connected with the work of the Government servant, but which are capable of widening his mind in a manner likely to improve his abilities as a civil servant' and to equip him better to collaborate with those employed in other branches of the public service."

22. A focused glance of the aforesaid rule would show that study leave may be granted to a Government servant with due regard to the exigencies of public service to enable him to undergo, in or out of India, a special course of study consisting of higher studies or specialized training in a professional or a technical subject having a direct and close connection with the sphere of his duty. Sub-rule (2) of Rule 42 of the Rules of 2010 clearly provides that study leave may be granted in addition to the conditions prescribed in Rule 42(1), for a course of training or study tour in which a Government servant may not attend a regular academic or semi-academic course, if the course of training or the study tour is certified to be of definite advantage to Government from the point of view of public interest. However, sub-rule (5)(i) of Rule 42 states as under: -

"(5) Study leave may be granted to a regular Government servant -

(i) who has satisfactorily completed the period of probation and has rendered not less than five years' continuous service including the period of probation and service in ad-hoc capacity under the Government;"

23. Clause (i) of sub-rule (5) of Rule 42 of the Rules of 2010 mandates that study leave may be granted to a regular Government servant who has satisfactorily completed the period of probation and has rendered not less than five years' continuous service. As such, the Government has regulated the grant of the study leave and in order to avail study leave, a Government servant must have satisfactorily completed the period of probation and has rendered not less than five years' continuous service including the period of probation, meaning thereby, he should be a regular Government servant on the post on which he has been appointed and secondly, he should have rendered 5 years' continuous service including the period of probation. The object of Rule 42(5)(i) of the Rules of 2010 is to ensure that the Government servant to whom study leave is to be granted must be a confirmed Government servant on his post as well as he must have completed five years' continuous service including the period of probation which is the definite object sought to be achieved as the Government servant who has not been confirmed on the post and who has not acquired experience of at least five years on the post may not be a fit person to be granted study leave, as he is still undergoing probation and he is yet to be confirmed on the post and he may not have sufficient experience on the post on which he is working.

24. The Supreme Court in Suresh Chandra Verma' s case (supra) has clearly held that a government servant or person like the respondent (therein) is given study leave with salary and allowances, etc. so as to enable him to complete the course of study and to furnish the certificate of his successful completion, so that the institute which has sanctioned the study leave would achieve the purpose and

object for granting such study leave. While highlighting the purpose of granting study leave, their Lordships further held that the purpose of granting study leave with salary and other benefits is for the interest of the institution and also the person concerned so that once he comes back and joins the institute the students will be benefited by the knowledge and expertise acquired by the person at the expense of the institute.

25. The Supreme Court in the matter of PGF Limited and others v. Union of India and another (2015) 13 SCC 50 laid down general principles / guidelines / precautions required to be observed by the Court before which enactment / provision is challenged and further held that Court can take note whether challenge is made at the earliest point of time or long time-gap exists as between the date of enactment and the date when challenge is made, and observed as under: -

"37. The Court can, in the first instance, examine whether there is a prima facie strong ground made out in order to examine the vires of the provisions raised in the writ petition. The Court can also note whether such challenge is made at the earliest point of time when the statute came to be introduced or any provision was brought into the statute book or any long time- gap exists as between the date of the enactment and the date when the challenge is made. It should also be noted as to whether the grounds of challenge based on the facts pleaded and the implication of the provision really has any nexus apart from the grounds of challenge made. With reference to those relevant provisions, the Court should be conscious of the position as to the extent of public interest involved when the provision operates the field as against the prevention of such operation. The Court should also examine the extent of financial implications by virtue of the operation of the provision vis-a-vis the State and alleged extent of sufferance by the person who seeks to challenge based on the alleged invalidity of the provision with particular reference to the vires made. Even if the writ court is of the view that the challenge raised requires to be considered, then again it will have to be examined, while entertaining the challenge raised for consideration, whether it calls for prevention of the operation of the provision in the larger interest of the public. We have only attempted to set out some of the basic considerations to be borne in mind by the writ court and the same is not exhaustive. In other words, the writ court should examine such other grounds on the above lines for consideration while considering a challenge on the ground of vires to a statute or the provision of law made before it for the purpose of entertaining the same as well as for granting any interim relief during the pendency of such writ petitions. For the abovestated reasons it is also imperative that when such writ petitions are entertained, the same should be disposed of as expeditiously as possible and on a time- bound basis, so that the legal position is settled one way or the other."

26. As such, the Government / employer is entitled to prescribe by the Rules as to who will be the person eligible for grant of study leave particularly, he must

not be the probationer and he must have completed five years' continuous service on the post on which he is working before he can be sent on study leave, as even otherwise, leave is not a matter of right and cannot be claimed as a matter of right. Prescribing minimum experience as five years to avail study leave including confirmation on the said post, the rule cannot be branded as arbitrary or suffers from manifest arbitrariness and cannot be said to be violative of Articles 14 & 16 of the Constitution of India. Leave being the privilege and not being the right of Government servant, is not a matter of right vested in the Government servant, it purely depends on the administrative exigencies. Study leave is even at the expense / cost of the Government, and as such, the Government / employer has right to determine as to whether at the expense / cost of the Government and keeping in view the exigencies of public service / administrative exigencies so require, leave can be granted to the Government servant to undergo study, other interpretation would frustrate the object for which the study leave is granted, as sub-section (6) of Section 42 of the Rules of 2010 clearly mandates that study leave shall not be granted to Government servant with such frequency as to remove him from contact with his regular work or to cause cadre difficulties owing to his absence on leave and more particularly, Rule 42(5)(i) of the Rules of 2010 is in operation for more than twelve years and stood the test of time. Hardship to the petitioner cannot be the basis for determining the validity of Rule 42(5)(i) of the Rules of 2010 (see Saurabh Chaudri and others v. Union of India and others (2003) 11 SCC 146 (Constitution Bench)).

27. In view of the aforesaid legal analysis discussed herein-above, we are of the opinion that sub-rule (5)(i) of Rule 42 of the Rules of 2010 neither suffers from manifest arbitrariness nor it is violative of Articles 14 & 16 of the Constitution of India, even it is not violative of Article 21-A of the Constitution of India which provides that the State Government will provide free and compulsory education to all the children up to the age of 16 years.

28. In view of the aforesaid analysis, we are unable to hold that Rule 42(5)(i) of the Rules of 2010 suffers from manifest arbitrariness and is violative of Articles 14 & 16 of the Constitution of India as also Article 21-A of the Constitution of India and challenge made is not in larger public interest.

29. As a fallout and consequence of the aforesaid discussion, the writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).