

(2022) 04 CHH CK 0095
In the Chhattisgarh High Court
Case No : Writ Appeal No. 206 Of 2022

Lokesh Ahirwar

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 27-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 14
Chhattisgarh Civil Services (Leave) Rules, 2010 — Rule 42, 42(5)

Citation : (2022) 04 CHH CK 0095

Hon'ble Judges : Arup Kumar Goswami, CJ;Rajendra Chandra Singh Samant, J

Bench : Division Bench

Advocate : Rajesh Kumar Kesharwani, Astha Shukla, Shashank Thakur

Final Decision : Dismissed

Judgement

1. Heard Mr. Rajesh Kumar Kesharwani, learned counsel for the appellants. Also heard Ms. Astha Shukla, learned Government Advocate, appearing for respondents No. 1 to 5 and Mr. Shashank Thakur, learned counsel, appearing for respondent No. 6.

2. This appeal is preferred against an order dated 15.03.2022 passed by the learned Single Judge in Writ Petition (S) No. 1750 of 2022, whereby, the writ petition of the appellants was rejected.

3. The writ petitioners were appointed on 17.08.2021 to the post of Agriculture Teachers. At the time of appointment, the petitioners were pursuing Ph.D. courses and as a result of obtaining appointment, they could not pursue the Ph.D. course. A joint application dated 25.11.2021 was filed by the petitioners to allow them to pursue Ph.D. course and to grant leave without pay. The said representation was followed by other representations on the subject. As there was no response from the authorities, the petitioners approached this Court by filing writ petition numbered as Writ Petition (S) No. 992 of 2022, which was disposed of on 14.02.2022, providing that the representation of the petitioners

would be considered within a period of 15 days.

4. Thereafter, by an order dated 07.03.2022, the representation of the petitioners was rejected. While rejecting the representation, reference was made to Chapter-VI of the Chhattisgarh Civil Services (Leave) Rules, 2010 (for short, 'Rules of 2010'). The learned Single Judge at paragraphs 7 and 8 observed as follows:

"7. It is relevant at this juncture to take note of the fact that as regards grant of leave is concerned, the same has been dealt with under the Chhattisgarh Civil Services (Leave) Rules, 2010. Rule 42 i.e. Chapter-VI under the said Rules deals with Study Leave and Rule 42 also lays down the conditions for grant of Study Leave. Sub-Rule (5) of Rule 42 creates a specific bar so far as Study Leave being granted to the probationers and also to those employees who have not completed 5 years of continuous service including the period of probation. For ready reference Sub-Rule (5) of Rule 42 is being reproduced hereinunder:

"(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;

(ii) who is not due to reach the age of superannuation from the Government service within three years from the date on which he is expected to return to duty after the expiry of leave;

(iii) who executes a bond as laid down in rule 49 undertaking to serve the Government for a period of three years after the expiry of leave."

8. Admittedly, the appointment of the petitioners were made on 17.08.2021. As such the petitioners have not even completed one year of service. The appointment of the petitioners is on probation for a period of 3 years. In terms of Sub-Rule (5) of Rule 42 the petitioners do not have either 5 years of continuous service or a successful completion of the probation period and on both the circumstances the respondents would find it difficult in granting study leave to the petitioners."

5. Mr. Kesharwani submits that there are number of instances when the Government granted study leave even though the conditions enumerated under Rule 42(5) of the Rules of 2010 had not been fulfilled and therefore, the present petitioners are treated discriminatorily.

6. The learned Single Judge, while dealing with the above contention, had held that grant of study leave to some employees, who were under probation, cannot be a ground for claiming negative parity in the teeth of Rule 42 (5) of the Rules of 2010.

7. In the case of Basawaraj & Another v. Special Land Acquisition Officer, reported in (2013) 14 SCC 81, the Hon'ble Supreme Court had observed that

Article 14 of the Constitution does not envisage negative equality but has only a positive aspect and thus, if some other similarly situated persons had been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality cannot be claimed in illegality and therefore, cannot be enforced by a citizen or Court in a negative manner.

8. In that view of the matter, we find no good ground to interfere with the order of the learned Single Judge and, accordingly, the writ appeal is dismissed.

9. At this juncture, Mr. Kesharwani submits that the petitioners would file application for grant of any other leave that may be available to them. We make no observation on this submission.