

(2022) 02 PAT CK 0033

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.743 Of 2021

Manoj Kumar

APPELLANT

Vs

Bihar Agriculture University

RESPONDENT

Date of Decision : 01-02-2022

Acts Referred:

Citation : (2022) 02 PAT CK 0033

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : Rupak Kumar, Sriram Krishna

Final Decision : Disposed Of

Judgement

1. Heard the counsel for the parties.
2. The petitioner is aggrieved by the recovery of leave salary by way of 25% each month for his not having completed his Ph.D. course and breaching the promise contained in the Bond executed by him for said purpose.
3. The petitioner, in his capacity as Assistant Professor-Cum-Junior Scientist, was allowed study-leave for a period of three years with full-pay with effect from 20.01.2015 till 19.01.2018. He got himself enrolled with the Ph.D. Programme at the Punjab Agriculture University, Ludhiana on 06.01.2015. He had been pursuing his Ph.D. course but for some reason or the other, it could not be completed within the period of three years. On the request of the petitioner, the leave period was further extended for one year.
4. However, according to the counsel for the petitioner, because of the non-cooperation of the Punjab Agriculture University and the Co-Investigator nominated by the respondent/The Bihar Agriculture University, Sabour, Bhagalpur (in short the University), the petitioner could not submit his thesis

nor could he appear in the viva-voce test for which a date had been fixed and his non-appearance was because of the inability of the Co-Investigator

to accompany him to Punjab.

5. Be that as it may, the Ph.D. course of the petitioner has not yet been completed, notwithstanding the passage of four and half years since he was on leave.

6. The petitioner has now joined the service of the respondent/University again.

7. It has been submitted on behalf of the petitioner that he had executed an agreement Bond on 06.12.2014, undertaking to serve the University on

return from the study-leave for a period of five years. The Bond further indicated that in case of the failure of the petitioner to honour any one of the

conditions in the Bond or of the Regulations regarding study-leave or of not being successful in the course or leaving the training course incomplete or

in case of any unsatisfactory record of performance or conduct or misbehavior, if reported by the Institution, he would refund the whole or the part of

the training or leave salary or any other expenditure borne by the University along with an amount of pre-fixed damage of Rs. 10,000/-.

8. The counsel for the petitioner, therefore, has submitted that though a bond was executed by him for completing the Ph.D. Programme, but the

contents of the bond primarily contains the promise of serving the University after return from the study-leave for five years, so that the expenses

incurred by the respondent/University on his training/completion of educational course is taken advantage of by the University. Any other stipulation in

the Bond is only a further reiteration of promise to conclude/complete the training course and not return to the University without any degree.

9. In the present case, it is the contention of the petitioner that he has now joined the service and has not even the remotest of intentions of leaving the

University for joining at any other place for his livelihood.

Thus, the major part of the Bond has not been breached.

10. With respect to the non-completion of the course, it has been submitted that it is not solely attributable to him. There was non-cooperation by the

Punjab University where he had enrolled himself for the course and lot of time was otherwise consumed because of the Co-Investigator not having

accompanied him for the purposes of viva-voce. It that event, it cannot be said that the petitioner has breached any one of the terms of the Bond.

11. Under such circumstances, it has been urged that the recovery of 25% of the salary of the petitioner per month, which he had received from the

University during the period of his study-leave, is unwarranted and uncalled for.

12. As opposed to the aforesaid contention, Mr. Sriram Krishna, the counsel for the respondent/University has pointed out that the petitioner, as a

Faculty-Member, had applied for admission in the Ph.D. Degree course under the Faculty Development Programme. He was mandatorily required to

secure his admission in a reputed University and was to get a study-leave for a period of three years in the beginning with full-pay. Only in case of an

emergent requirement of extension of study-leave beyond three years, he could be sanctioned extended leave for one year but the total period of

leave, would not exceed four years. The extension of one year, as noted above, would also be contingent on the candidate having sanctioned earned-

leave in his account. If there is no earned-leave in the account of the candidate, he could apply for leave without pay.

13. It has further been submitted that when the petitioner did not complete his Ph.D. within the first three years and applied for extension, it was

promptly given to him. Even then, he could not complete his Ph.D., for whatever reasons, and, therefore, the petitioner could not have remained on

full-pay.

14. In the case of the petitioner, the respondent/University has chosen to retain his services but in accordance with the Bond, the salary paid to him for

all this while (study-leave) is being recovered by slashing down his monthly salary by 25%.

15. Mr. Krishna submits that this cannot be said to be uncalled for or vindictive and is only in tune with the Faculty Development Programme (F.D.P.)

schedule and the promise of the petitioner in the Bond executed by him.

16. The action of the respondent/University is sought to be defended by submitting that all these aspects were gone into by the University authorities

and only then, the order has been passed.

17. After having heard the counsel for the parties, it appears that the petitioner had enrolled himself for the Ph.D. Programme and has almost

completed the same but for the submission of the dissertation and in the viva-voce test. The petitioner has offered reasons for the delay in conclusion

of the Ph.D. course. It does not appear, prima facie, that there was deliberate

intention on the part of the petitioner to delay the process of completion of Ph.D. or to remain on study-leave.

18. Under such circumstances, the Bond executed by the petitioner ought not to be read as if it were a forfeiture Bond.

19. The Guidelines issued by the Academic Council of the respondent/University with respect to grant of study-leave is also very clear. After three years of study-leave with full pay, an extension could be given for one year but only on the basis of earned-leave which an applicant has in his account. If there is no earned-leave, such an applicant will have to go on leave without pay. No leave could be sanctioned beyond a period of four years.

20. Apart from this, what has caught the attention of this Court is the regulation of the Faculty Development Programme, which indicates that a

Faculty- Member, proceeding on study-leave for pursuing Ph.D. Degree/ Programme will be compulsorily required to execute a Bond of five years to

serve the University after completion of the Ph.D. Degree on notarized non-judicial stamp. In case of breach of Bond, he shall be liable to refund all

the amount of salary paid to him during the study-leave. This makes it very clear that the Bond is only to be executed with a promise of serving the

University for a period of five years after return from the study-leave. No Bond was required to be executed for completing the Ph.D. course within

the time schedule. Thus, the promise made by the petitioner by way of the Bond was beyond the terms of the advisory in that regard by the Academic

Council of the respondent/University.

21. The argument by the counsel for the petitioner is correct that those stipulations in the Bond are not to be treated as forfeiture Bond, but as a

promise to come back to the University and serve with the acquired knowledge of the higher Degree of Ph.D.

22. Be that as it may, in accordance with the Rules of the University, for the three years that the petitioner remained on study-leave with full-pay, this

Court is of the view that no deductions are required to be made, notwithstanding the fact that the Ph.D. course could not be completed. For the fourth

year of the leave of the petitioner, which was sanctioned to him, it has to be counted as earned-leave and in case the petitioner does not have

sufficient earned-leave in his account then for those months, he shall remain on

leave without pay. Beyond the period of four years, he shall be without pay.

23. Thus, this Court is of the view that a fresh calculation be made on this principle and in case any amount is due against the petitioner, the respondent/University may consider either relaxing/condoning the same or recovering it from the petitioner by yet softer installment, say perhaps a reeducation of 5% of the salary till the amount is realized.

24. For the reasons noted above, the orders contained in Annexures â?" 1, 2 and 3 are set-aside.

25. The petitioner is directed to place a copy of this order before the Vice-Chancellor of the respondent/University, who, within a period of sixty days of the receipt of this order, shall consider the case of the petitioner and in case it is permissible under the Rules, condone the recovery of any amount from the petitioner or if that is not permissible, direct for recovery to be made in terms of what has been stipulated above.

26. On the request of the petitioner before the Vice-Chancellor of the University, it would only be appropriate for the Vice-Chancellor to communicate with the Punjab Agriculture University, Ludhiana for affording cooperation to the petitioner for any early submission of his dissertation and viva-voce, so that his training is completed.

27. Needless to state that for that the petitioner will not be on study-leave and shall keep on serving the respondent/University.

28. With the aforesaid observation/direction, the writ petition stands disposed off.