

(1989) 06 KAR CK 0056
In the Karnataka High Court
Case No : Writ Petition No. 11585 of 1979

M.R. Suryanarayana Murthy

APPELLANT

Vs

University of Mysore

RESPONDENT

Date of Decision : 14-06-1989

Acts Referred:

Karnataka Civil Services Rules, 1957 — Rule 10, 6, 7

Citation : (1990) ILR (Kar) 688 : (1989) 3 KarLJ 4

Hon'ble Judges : Rama Jois, J

Bench : Single Bench

Advocate : U.N. Satyanarayana, for the Appellant; Nanjunda Reddy, for Kesvy and Co. and Central Govt. Standing Counsel for R-2, for the Respondent

Final Decision : Allowed

Judgement

Rama Jols, J.—The petitioner who is a Lecturer in Commerce in the service of Mysore University has presented this petition praying inter alia for the issue of a Writ of Mandamus directing the University to treat the period from 25-9-1973 to 31-3-1978 during which he had gone to Birmingham University in U.K. for higher studies, as leave with salary and pay all the arrears of salary and also for other reliefs.

2. The facts of the case, as stated by the petitioner are as these: The petitioner was a Lecturer in Commerce in the service of the Mysore University. The Government of India evolved a Scheme entitled "The Award of National Scholarship for Studies Abroad." The Government of India selected him for the award of Scholarship after his name was sponsored by the Mysore University. After the Scholarship was awarded, the petitioner went to U.K. and joined the Birmingham University. During the stay at Birmingham he made a grievance to the effect that the salary and allowances to which he was entitled to under the Rules had not been given to him by sanctioning the necessary study leave with allowances and as a result he was put to considerable hardship as the amount of scholarship was not sufficient to maintain himself and also his family in India.

Thereafter, after protracted correspondence by communication dated 26-12-1974 (Ex.L1) leave was sanctioned as below:

"i. Half-pay leave for 40 days from 25-9-1973

ii. The rest will be L.W.A. from 4-11-1973 to 24-9-1979 (inclusive)

Note: No further extension of leave beyond four years will be granted,"

The petitioner protested against the grant of half pay leave of 40 days and leave without allowance for the rest of the four years, by making representations. The request was rejected by communication dated 1st December 1975 (Ex.N). The relevant portion of that letter which was addressed by the Registrar to the Professor and Head of the Department of Commerce reads:-

"Reference is invited to this office letter of even No. dated 13-8-1975 addressed to Sri M.R. Suryanarayana murthy and to state that his contention that he is a sponsored candidate by the University of Mysore is not acceptable to the University. This may please be brought to the notice of Sri M.R. Suryanarayana murthy, again with reference to his letter dated 5-11-1975 and he may be also informed that no useful purpose would be served by revoking this issue on which the final decision of the University has already been communicated to him."

Subsequently by a communication dated 30th April, 1979, the Administrative Officer of Manasagangotri, addressed a letter to the Registrar of University on the topic. That letter reads:

"With reference to the above, I write to state that Sri M.R. Suryanarayana Murthy, Lecturer in Commerce has been granted combined leave for 4 years from 25-9-1973 to 24-9-1977 (BDI) as follows in connection with his higher studies at Birmingham University U.K. vide your Order No. D6-506/73-74 dated 26-12-1974.

Half pay leave for 40 days from 25-9-1973 to 3-11-1973

the rest of the period will be LWA from 4-11-1973 to 24-9-1977.

Further sanctioned extension of LWA from 25-9-1977 to 31-3-1978 to the Lecturer vide your Order No. D6-506/73-74 dated 23rd January 1978 and he is directed to report himself for duty to the Professor and Head of the Department of Commerce, MGM, on or before 1-4-1978. The Professor and Head of the Department Commerce in his letter No. MG.Com.T.1-5/78-79 dated 1-4-1978 has reported that Sri M.R. Surya-narayana Murthy has reported for duty on the F.N. of 1-4-1978 after return from abroad. His last increment was given on 1-8-1973 raising his pay from Rs.440/- to Rs.480/- p.m.

He was on LWA for 1609 days from 4-11-1973 to 31-3-1978. Since he has not obtained his degree within period of three years, no period of absence other than the leave that was at his credit counts for earning increments as per Rule 10 of Appendix II of KCSR 1958. Hence his next increment falls due on 5-1-1979 after

postponing 1609 days of LWA (LWA from 4-11-1973 to 31-3-1978) raising his pay from Rs. 480/-PM to Rs. 520/- PM but as per Government Order No. FD 24-SRP (3) dated 31-3-1973 his increment falls due on 1-1-1979 instead of 5-1-1979.

I request you kindly to sanction the increment and also allocation in respect of the said lecturer at an early date. The service register of the lecturer is also enclosed herewith for reference and return."

Thereafter the petitioner has presented this Writ Petition.

3. In the statement of objection filed by respondent-1 the specific stand taken by the University is, that the claim of the petitioner was based on his being a sponsored candidate but actually he was not a sponsored candidate. In the statement of objection the correctness of Ex. A1 produced by the petitioner in support of his plea that the University had sponsored him, has been disputed. It is specifically averred that the Registrar of the University had not signed in token of undertaking the responsibility for the petitioner a sponsored candidate. It is also further averred that as early as in 1973, itself the University had made it clear to the petitioner that he had to go on study leave by taking leave on salary to whatever extent he had leave to his credit and by taking rest of the leave as leave without allowance.

4. There is no dispute that the Rules found in Appendix II to the Karnataka Civil Service Rules (for short "the Rules") have been adopted by the University but the stand of the University is, the case of the petitioner falls under Rule 10 of the said Rules and it is also not disputed by the learned Counsel for the petitioner that if his case falls under Rule 10 of the Rules, what the University has done is correct, but his plea is that his case falls under Rule 6 of the said Rules.

5. Therefore, the crucial question arising for consideration in this case is, whether the petitioner was a sponsored candidate and therefore Rule 6 of Appendix II to the Rules read with Annexure "B" to the said Rules is applicable to the case of the petitioner or Rule 10 of the Rules. In order to find out the answer to the aforesaid question, it is necessary to trace the entire history of the case and the correspondence which has ensued in connection with the application of the petitioner, for Government of India Scholarship, The Ministry of Education, Government of India had evolved a scheme entitled "National Scholarship for Study Abroad Scheme". The relevant portion of that Scheme reads:

IV. COUNTRIES OF STUDY/RESEARCH:

Arrangements for study/research abroad will be made for the successful candidates in Countries where appropriate facilities in the relevant subjects are available. The candidate's preference for any Country or for any particular institution will be borne in mind, but the final decision in the matter will rest with the Government of India.

Candidates may make their own efforts for securing admission in institutions

abroad and in the event of their being selected for awards under this scheme, the selected candidates will be permitted to join the institutions to which they have secured admission.

V. DURATION OF SCHOLARSHIP:

The award will be made for the duration of the course for which a scholar is initially selected. The period will ordinarily be not more than 3 years but shall in no case exceed 4 years. The stipend will be payable from the date of arrival in the Country of study upto date of departure. But if it becomes necessary for a scholar to stay in the Country of study after the completion of his study/research for want of passage or other approved reasons, reduced rates of stipend may be paid to him. Scholars are required to return to India immediately on completion of the course of study/research for which they were sent abroad.

LX VALUE OF FULL SCHOLARSHIP:

The rates of scholarship will be as follows subject to such modifications as the Government may decide upon from time to time:-

a) Maintenance Allowance:

U.S.A. and Canada U.S. \$ 2250 per annum U.K. & other Countries ? 660 per annum

(payable in local currency)

b) Payment for Books, Essential apparatus and study Tour, Typing and Binding Thesis:

The actual cost of books, essential apparatus and study tours (coach class in U.S.A. and second class in U.K. and other Countries) and binding of thesis as recommended by the Professor concerned will be paid, but it shall not in any case exceed ? 125/- per annum in the U.S.A. ? 30 per annum in the United Kingdom, and a similar amount to be prescribed for every other Country.

(The Embassy/High Commission of India will obtain a list of books and essential apparatus purchased by the scholar and their cost including the cost of typing and binding the thesis from the Professor under whom the scholar will study and make the payment to the scholar as and when necessary. Within fifteen days of making the payment, vouchers in respect of the purchase of books, etc., should be submitted by the scholar to the Indian Mission concerned."

The other parts of the scheme provide for equipment and journey allowance. The petitioner submitted his application seeking selection for the award of National Scholarship under the aforesaid scheme. The application of the petitioner was forwarded to Government of India by the letter of the Registrar dated 22-5-1972 copy of which is produced as Exhibit "A". The Annexure to the said letter was the application of the petitioner produced as Exhibit "A-1". Below that application the sponsoring authority is required to issue a certificate. As the entire case of the

petitioner is based upon these two documents, it is necessary to set out the contents of the same. It reads:

"From

The Registrar, University of Mysore, MYSORE.

To

The Secretary to Government of India, Ministry of Education and Social Welfare,
National Scholarships Division, Shastri Bhavan, NEW DELHI.

Sir, Sub: Application for National Scholarship for study abroad.

I am to forward herewith for consideration the application of Sri M.R. Suryanarayana Murthy Lecturer in Commerce of this University applying for award of the above scholarship.

The receipt of the application may please be acknowledged.

Yours faithfully Sd/- Registrar"

"APPLICATION FORM FOR NATIONAL SCHOLARSHIP FOR STUDY ABROAD

Subject in order of Preference.

1. Name in full (in capital letters) M.R. SURYANARAYANA MURTHY

1. Accountancy (Business Administration)

2. Managerial Finance (Business Admn.)

2. Name of the sponsoring authority and/or name of the authority which will employ you/after return from abroad.

University of Mysore

*Underline the part of the name by which you would normally like to be called.

*Strike out if not applicable.

For official use only.

A

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Q

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B

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R

22(a) Certified that Shri M.R. Suryanarayana Murthy is employed by us and has been sponsored by me/us for study abroad.

We undertake that he will be permitted to join his department organization on return from study abroad. We will ensure that his terms and condition of service i.e. salary, seniority, promotion, leave etc. will not be adversely affected on account of his absence and further note that everything possible will be done to provide the scholar with work and conditions of service suitable to and commensurate with his qualifications/training obtaining abroad.

Sd/- Registrar, University of Mysore Signature of Employing/ Sponsoring Authority. Seal of Office."

The application discloses that the petitioner had secured 7th rank in the final B.Com., examination and 3rd rank in M.Com., Degree Examination and he wanted to study for Ph.D. Degree in Accountancy. Paragraph 22(a) of the application extracted above shows that the certificate is required to be issued by the sponsoring Authority. The Registrar of the University has affixed his signature with the Official Seal of the "Registrar of Mysore University, Mysore." As the University had disputed the correctness of Ex.A-1, the University was called upon to produce the office copy of the original of Ex.A-1 which had been sent to Government of India. Accordingly, a photocopy of the same has been produced. On a comparison of the extract of Ex.A-1 produced by the petitioner along with the photo copy of the original produced by the learned Counsel for the University, it is clear that what the petitioner has produced is a true and faithful copy of the said document and the stand of the University that what the petitioner had produced is not a true copy of the original is itself incorrect. After the application of the petitioner was forwarded to the Government of India, with the aforesaid certificate, by the Registrar, the Government of India addressed a letter dated 12th December, 1972 to the petitioner communicating about the confirming of the award of scholarship for the petitioner for Ph.D. Degree in the subject of Commerce. The said letter is found in the original records of the University. Paragraphs 1 and 2 of the said letter read as follows:

"With reference to your application for the award of a scholarship under the above mentioned scheme and in continuation of this Ministry's letter No. F.16-19/72NS3 dated 7th August, 1972, the Government of India is pleased to confirm award of the scholarship to you for Ph.D. Degree in the subject of commerce for specializing in Management Accountancy Area under the scheme of National Scholarships for Study Abroad, 1972-73. A copy of the scheme containing the terms and conditions governing the award of scholarship is attached for your information.

2. The rates of scholarship and other allowances will be as specified under Para IX of the Scheme. The rates and terms and conditions will be subject to such modifications as the Government may decide upon from time to time. Such modification will be duly notified to you."

After the receipt of the above letter, the petitioner addressed a letter to the Registrar on 13th July, 1973. The said letter is found in the original records and the relevant portion of that letter reads as follows:

"I am a candidate sponsored by the University under "The National Scholarship for Studies Abroad Scheme" of the Government of India.

As I have been selected under the scheme to pursue my studies at the University of Birmingham, United Kingdom, I need immediately a No Objection Certificate from the University to obtain my passport, visa and other documents from the appropriate authorities to proceed abroad.

I, therefore, request you to issue immediately the said certificate and oblige."

As requested by the petitioner, there is no dispute and that "No Objection1 Certificate was granted to the petitioner to go abroad. The petitioner also applied for leave by his letter dated 16th July 1973, copy of which is produced as Ex-"B". The relevant portion of that letter reads:

"Sir,

Sub: Application for Study Leave.

I am a candidate who has been awarded a Scholarship by the Government of India under "The National Scholarships for Studies Abroad 1972-73 Scheme" for studies abroad under the sponsoring of the University of Mysore, the duration of the scholarship Scheme, under which I have been selected by the Ministry of Education and Social Welfare, Government of India, is four years. Under this Scheme, I am proceeding to the United Kingdom to join the University of Birmingham during the first week of September 1973. I, therefore, request you to kindly grant me leave for a period of four years or any period extended by the Government of India in addition to the said normal duration of the scholarship scheme to enable me to pursue my studies abroad.

In accordance with the sponsorship declaration given by the University of Mysore to the Government of India in my application forwarded to the Ministry of Education and Social Welfare, the University is requested to fully protect my salary and other service conditions during the period of my stay abroad for study purposes under this scheme.

Thanking you,

Yours faithfully, Sd/- (M.R. Suryanarayana Murthy) Lecturer in Commerce."

As can be seen from paragraph 2 of the letter, the petitioner expressly stated that his conditions of service should be protected in accordance with the sponsorship declaration given by the University. The petitioner was also required to execute an agreement which he did on 24th September, 1973. The relevant portion of that agreement reads:

"This Agreement executed on the Twenty-fourth day of September 1973 between

Sri M.R. Suryanarayana Murthy, aged 25 years, son of Sri M.V. Ramachandra Murthy presently residing at Mysore (hereinafter called the Scholar which expression shall include his heirs and legal representative) and Sri B. Chandra Prakash son of Ramachandra Sharma aged about 29 years, and Sri C.R. Muniramappa, aged about 42 years, son of Chikkamylappa, Mysore (hereinafter called "Sureties" which expression shall include their heirs and legal representatives) in favour of the University of Mysore.

WHEREAS at his request the Scholar has been granted leave under the Service Rules of the University of Mysore for purposes of higher studies under the Government of India Scholarship Scheme and has accordingly entered the University of Birmingham for obtaining the degree of M.Soc.Sc. & Ph.D. in that University: Now, therefore, the scholar the sureties Government as follows:

- 1) The Scholar shall be bound by the Rules governing the grant of permission for prosecution of higher studies abroad as are in force in the University of Mysore and as may come into force from time to time.
- 2) The Scholar shall prosecute his studies or training diligently and shall submit reports periodically as regards the progress made by him in that behalf.
- 3) During the period of leave granted to the Scholar by the University, he shall not take up any job or employment or profession or occupation without the express permission of the University.
- 4) The Scholar shall complete his course within the period of leave granted to him, namely 3 years and if for reasons beyond his control, the course cannot be completed within the said period, the leave sanctioned to him may at the discretion of the University be extended by one more year."

Thereafter the petitioner went to United Kingdom and joined Birmingham University. During the stay at Birmingham he made a grievance before the Government of India to the effect that the University had not extended to him the salary and other benefits in accordance with the Rules applicable to sponsored candidates and therefore the Government of India might use its good Offices to secure those benefits to him. Pursuant to this application made by the petitioner (Ex.H) to Government of India through the High Commission of India at London, the Government of India addressed a letter dated 14th October, 1974 to the University. In the said letter, the Government of India made two requests to the University viz., (1) for according permission to extend the period of his stay at Birmingham as it was essential for completing the Ph.D. Degree and (2) to extend to him the service benefits to which he was entitled to during the period of his stay abroad. The said letter is marked as Ex.H-1 and that letter reads:

"To

The Registrar, University of Mysore, Mysore.

Subject: National Scholarships for study abroad 1972-73 Shri M.R. Suryanarayana murthy.

Sir,

I am directed to invite your attention to the Ministry's endorsement No. F. 16-19/72-NS.3 dated the 12th December, 1972 under which a copy of the letter confirming the award of scholarship under the above mentioned scheme in favour of Shri M.R. Suryanarayana Murthy, a Lecturer in Commerce Department of Post Graduate Studies and Research, in your University was sent to you. The application of the Scholar was duly sponsored by your University on 19th May 1972. The Scholar also executed a prescribed bond with this Ministry and was sent to U.K. for Ph.D. Degree in Commerce at the University of Burmingham. He joined the said University initially as M.Sc. student subject to subsequent transfer to Ph.D. course on 1st October 1973. Normally the Ph.D. course takes about 3 years but overseas students doing Ph.D. in U.K. usually take a little, more time. Under the terms and conditions laid down under the scheme of scholarship the scholars are required to return to India only on completion of the course of studies/research for which they are sponsored. Under these circumstances, the scholar cannot return without completing his course.

This Ministry has been informed by Shri Suryanarayana Murthy through the High Commission of India; London, that the University of Mysore wants to curtail his leave period of maximum of 3 years by withdrawing the provision, extension upto 1 year beyond the normal period of 3 years prescribed in the agreement which he had signed at the instance of the University of Mysore before his departure for U.K. We have also been informed that he has not been given the leave salary and other benefits as admissible to such sponsored candidates.

As per the letter of Professor and Head of the Department at Burmingham University 90% of Overseas student require more than the minimum period and as such the extension of one year seem to be essential. In case the University does not permit him to stay for a year more, the Scholar will not be able to complete the course for which he has been sent and for which the Government of India has spent so much money in the form of very valuable foreign exchange. As such it would be very essential that an extension of one year more is granted to Shri M.R. Suryanarayana Murthy by the University authorities and if necessary by relaxing the Rules.

You are, therefore, requested to consider the case of Shri Murthy sympathetically and permit him to be governed by the conditions stipulated in the original agreement which he had signed with the University particularly with regard to the period of his leave etc., as without this the scholar will not be able to complete his studies and the money spent by the Government of India on him will go waste. Further, he may also be given leave salary and other benefits as are admissible to sponsored candidate. In this connection you will kindly recall that the University while forwarding the application in May 1972 gave an

undertaking that the scholar will be permitted to join his department on his return from studies from abroad. The University assured that the terms and conditions of his service i.e., salary, seniority promotion, leave etc. will not be adversely affected on account of his absence. It was also stated that on the certificate signed by the University that everything possible will be done to provide the scholar with the work and conditions of service suitable to and commensurate with his qualifications/training obtained abroad.

In view of the position explained above, this Ministry would be grateful if you could kindly permit the scholar to continue his studies by granting extension of leave for the period necessary for the completion of his Ph.D. course at the University of Birmingham, U.K. which in no circumstances will exceed 4 years in all.

Yours faithfully, Sd/- (J.N. Sharma) Asst. Educational Adviser."

In the first paragraph of the above letter, the Government of India to whom the application was forwarded by the Registrar of the University expressly stated that the application of the petitioner was sponsored by the University on 19th May 1972. After all this, the University passed the order on 26th December, 1974, copy of which is produced as Ex.L-1. The said order reads as follows:

"References:

1. Letter dated 16-7-1973 from Shri M.R. Suryanarayana Murthy, Lecturer in Commerce, Post Graduate Department of Commerce, Manasa Gangotri, Mysore (forwarded through the Head of Department, Commerce, Manasa Gangotri, Mysore) stating that he has been awarded a Scholarship by the Government of India under "The National Scholarships for Studies Abroad - 1972-73 Scheme" for studies abroad, under the sponsorship of the University of Mysore and he has been selected by the Government of India, Ministry of Education for higher studies at U.K. for a period of 4 years from September the year 1973 and requesting sanction of leave to pursue his studies at U.K.
2. This office letter dated 22-9-1973 addressed to the. Professor and Head of the Department of Commerce, Manasa Gangotri, Mysore, communicating the decision of the Syndicate dated 1-9-1973 that Shri M.R. Suryanarayana Murthy would be sanctioned leave for 3 years as per Rules and the meanwhile he may be asked to execute the agreement as per Rules etc.
3. Letter No. MG.Com.T.215-9/73-74 dated 24-9-1973 from the Professor and Head of the Department of Commerce, Manasa Gangotri, Mysore, intimating that Shri M.R. Suryanarayana Murthy is relieved of his duties in the Department on 24-9-1973 A.N. to proceed to U.K.
4. Letter No.MG.Accts. 5/4374-75/73-74 dated 19-11-1973 from the Administrative Officer, Manasa Gangotri forwarding the leave application and the service register of Shri M.R. Suryanarayana Murthy for sanction of half pay leave for 40 days and the rest L.W.A. from 25-9-1973.

5. Letter No.MG.Com.T. 14-4-/74-75 dated 8-4-1974 from the Professor and Head of the Department of Commerce, Manasa Gangotri, Mysore (forwarding the letter of Shri M.R. Suryanarayana Murthy dated 25-3-1974 requesting sanction of leave for a total period of four years for the reasons stated therein) recommending in the circumstances stated therein for sanction of leave for a total period of four years from 25-9-1973.

6. Letter No.F.16-19/72 (NS-3) (NS-5) dated 14-10-1974 from the Assistant Educational Adviser, Ministry of Education and Social Welfare, Government of India, New Delhi, recommending for the reasons stated therein and to sanction leave to Shri M.R. Suryanarayana Murthy for a total period of 4 years to complete his Ph.D. course at the University of Birmingham, U.K. in relaxation of the Rules.

7. University Syndicate resolution dated 23-11-1974.

ORDER No.D6 506/73-74 dated 26th December, 1974.

Pursuant to the resolution of the University Syndicate dated 23-11-1974 referred to above Shri M.K. Suryanarayana Murthy, Lecturer in Commerce, Post Graduate Department of Commerce, Manasa Gangotri, Mysore (now on higher studies at U.K.) is sanctioned leave for a period of four years from 25-9-1973 in connection with his higher studies at Birmingham University, U.K. as noted below as a special case.

i. Half-pay leave for 40 days from 25-9-1973. ii. The rest will be L.W.A. from 4-11-1973 to 24-9-1977 (inclusive).

Note: No further extension of leave beyond four years will be granted."

The petitioners continuance beyond three years was approved. But as regards his claim for treating the entire period as leave on pay was not conceded. After his coming back to the Country and rejoining the service of the University, the petitioner again made a representation on 3rd May 1978 (Exhibit "Q"). He requested for grant of increments due to him counting the period of his stay abroad also for increments. The relevant representation reads:-

"Between 24th September 1973 and 31st March 1974 I had been abroad to pursue my higher studies under the National Scholarship Scheme of the Government of India, at the University of Birmingham, U.K. under the study leave granted by the University of Mysore. After completing my studies at the University of Birmingham, I have now returned and resumed my duties at the Department of Commerce, Manasa Gangotri, Mysore from 1st April 1978. On 11th August of every year I am due my annual increments in the salary scale. I am therefore, writing this letter to request you to kindly refix my salary after due consideration of the duration of my services. Please note that on 11th August 1977, the date on which I am due my last annual increment in the salary scale, I completed the 6th year of my service.

Thanking you."

As stated earlier, the request of the petitioner for extending to him the benefit as a sponsored candidate was rejected by a communication dated 1-12-1975 under Ex. "N" extracted earlier and for purposes of granting increments the period of 1609 days of leave without allowance from 4-11-1973 to 31-3-1978 was also excluded.

6. The relevant documents in particular Ex.A and A-1 clearly establish that the petitioner's going abroad was sponsored by the University with an assurance to Government of India that the conditions of service as applicable to a sponsored candidate would be protected. This is reinforced by the letter of the Government of India dated 14th October, 1974 (Ex.H-1) in which the Government of India has expressly stated that the application of the petitioner was duly sponsored on 19th May, 1972. The learned Counsel for the University however strenuously contended that just because the Registrar has signed at the bottom of the application form of the petitioner and had sent a covering letter, it cannot constitute the basis for the claim that the petitioner's going abroad for higher studies under Government of India Scholarship was sponsored by the University. I see no substance in this submission. The last portion of the application was meant for the grant of sponsorship certificate. The Registrar has affixed his signature below the certificate with the official seal and has also indicated the place and date on which, the document was signed by him. Further in the nature of things, it is clear that Government of India wanted the University to sponsor the name of the petitioner if it so desired and if the University was not willing to sponsor the name of the petitioner for undertaking studies abroad under the scheme for the award of scholarship by Government of India, there was no necessity for the University to forward the application to Government of India and particularly with the aforesaid certificate.

7. Learned Counsel for the University however invited my attention to the two resolutions of the Syndicate found, in the records. The first occasion on which the matter came up before the Syndicate was on 4-8-1973 i.e., long subsequent to the date of sponsoring. According to the original records the subject was deferred and a note was put up to the following effect:

"What is the commitment involved by issuing sponsored certificate on the part of the University may be explained."

The matter again came up before the Syndicate on 1st September, 1973. A note was put up by the office referring to the award of Scholarship to the petitioner by the Government of India under the "National Scholarship for Studies Abroad - 1972-73 Scheme" and to the effect that the duration of the scholarship was for four years. Names of ten persons to whom foreign scholarship had been granted and to whom only leave at their credit was granted and for the balance of the period leave without allowance was sanctioned were also mentioned. However, the information, regarding the commitment to which the University would be put

to on account of the sponsorship of the petitioner was not stated. The Preamble also referred to an earlier resolution of the Syndicate of 1966-67 under which it was decided that only leave at the credit of Lecturers intending to go abroad for higher studies should be granted was set out. But the fact that sponsorship certificate had already been issued to the petitioner by the Registrar on 19-5-1972, was not disclosed. The resolution passed in the said meeting reads -

"RESOLVED that Shri M.R. Suryanarayana Murthy, Lecturer in Commerce be granted leave for higher studies abroad as per Rules, 10 of appendix II of M.C.S.R. The leave shall not exceed three years. There shall be no other commitments on the part of the University.

(Underlining by me)

The underlined portion in the resolution has been added in ink. It is by the underlined portion of the said resolution Rule 10 of Appendix II of the Mysore Civil Service Rules was sought to be applied to the case of the petitioner. As stated earlier if that Rule is applicable to the case of the petitioner, the claim of the petitioner put forward in the Writ Petition is liable to be rejected. But the case of the petitioner is, it is Rule 6 of Appendix II to K.C.S.R. read with Rules in Annexure "B" which were applicable to his case and not Rule 10. It is on account of the above resolution invoking Rule 10, to the case of the petitioner his claim has been rejected. It is the contention of the petitioner that no such condition could have been imposed by any such subsequent resolution. It is now the appropriate stage to refer to the relevant portions of the Rules found in Appendix II to the K.C.S. Rules. The said Appendix sets out the facilities available to Civil servants for study training outside India. The relevant Rules read as follows:

"Facilities available for Study or Training outside India.

1. (a) With a view to enable selected candidates to undergo advanced studies or training and with a view to meet the requirements of technical and other departments for foreign trained personnel, foreign scholarships or fellowships will be granted from the following sources:-

(i) Damodar Das Scholarships from four-fifths of the annual proceeds of the Damodar Das Charities Fund;

(ii) Her Highness the Yuvarani Sriraathi Kerapuchaluvajammaniavaru Foreign Scholarships;

(iii) Out of the Budget grants of the departments concerned and of the industrial concerns like the Mysore Iron and Steel Works, Bhadravathi etc. under study leave, fellowship and deputation of Government servants to foreign Countries.

(b) In addition to the above, offers of scholarships and fellowships made by foreign Governments and foundations under the schemes such as Colombo Plan, Point Four Training Facilities, Indo-German Industrial Co-operation Scheme, United Nations Fellowships and Scholarships. British Council Scholarships and

also by the Government of India under the modified Overseas Scholarships Scheme, etc., and certain other schemes operated through non-official channels, such as Rockefeller Foundation Ford Foundation, Indian Institute of Public Administration etc., will also be availed of. In these cases, Government Officials should not approach or negotiate . direct with foreign Governments or organisations for scholarships or travel grants.

6. Save as provided in Sub-rule (1) of Rule 1 of Annexure "B" the period of deputation under any of the schemes referred to above will be treated as service counting for pension and promotion but not for leave. The service will also count for earning increments in the post held by them prior to the deputation or in the post to which they had been promoted and which they continue to hold during the period or in the post to which they may receive promotion under Exception below Rule 60 of the Mysore Civil Services Rules, during the period of study Leave but they will not be allowed to draw increments during the period of deputation.

7. (a) The Scholar shall, before leaving the State, enter into a bond stipulating that he accepts the scholarships or fellowship on the condition specified below. The bond shall be either in the form noted in Annexure "C" in case he prefers to furnish a Bank Guarantee in the form noted in Annexure "D" or in case security is furnished by depositing money in the Government Savings Bank and/or in case security is furnished by pledging National Saving Certificates or National Defence Certificate endorsed in favour of the Governor as provided for in Article 355 of M.P.C. in the form noted in Annexure "E".

As can be seen from the above Rule among the various categories of persons to whom facilities available for stay and training outside India applicable, the persons selected for an award of Scholarship by Government of India are Included. According to Rule 6, the period during which the person is selected for study outside India under the award of Scholarship is entitled to have his entire period of stay outside India for the purpose of study for counting Increments, pension and even promotion. Rule 7 however requires such a person to execute an agreement as prescribed therein. Annexure "B" to these Rules govern the conditions regarding grant of leave as also the specification as to what portion of the period of such stay outside India should be treated as duty. The relevant portion of that Rule reads:

"1. (i) If the period of absence of a Government servant from his post in India does not exceed eighteen months, such period shall be treated as deputation on full pay which he would have drawn, had he remained on duty in India and it shall count as duty for all purposes.

(ii) If the period of absence exceeds eighteen months but does not exceed twenty-four months, such period exceeding eighteen months shall be covered by grant of special leave on half average pay, subject to the conditions mentioned in Rule 2 of Annexure "A" and such period shall be treated as service counting for

promotion pension and increment but not for leave.

Provided that he shall be permitted to avail himself of earned leave to the extent due and admissible in lieu of special leave.

(iii) If the period of absence is permitted to exceed twenty four months such period exceeding twenty four months shall be covered by grant of leave with pay due and admissible and if no such leave is due or admissible, by grant of leave without allowance to the extent necessary.

2. No Dearness Allowance and compensatory-cum-house rent allowance shall be admissible except for the first six months of absence at the rates at which the Government servant would have drawn, had he remained on duty in India.

Provided that during the period exceeding six months dearness allowance at such rate as is appropriate to the basic pay shall be admissible for a Government servant who has not elected revised scales of pay sanctioned in the Mysore Civil Services (Revised Pay) Rules 1961.

(The benefit derivable under Rules 1 and 2 Annexure "B" is also applicable to Government servants deputed for study or training outside India under Rule (I) (b) of Appendix II or after 1st April 1966)."

According to Sub-rule (1) of the above Rules, if the period of stay abroad does not exceed 18 months, the whole period has to be treated as deputation and full pay has to be drawn and disbursed as if he had remained on duty in India. According to Sub-rule (ii) of the period of absence exceeds 18 months but does not exceed 24 months, the period exceeding 18 months has to be covered by grant of special leave on an average pay and such period has to be treated as service, counting for promotion, pension and increments. But according to Sub-rule (iii) in cases, where the period of absence exceeds 24 months such period exceeding 24 months has to be covered by grant of leave with pay due and if no such leave is admissible by grant of leave without allowance. From these provisions it is clear that if the petitioner is treated as a sponsored candidate he was entitled to get full pay and allowances for a period of 24 months and in respect of the balance of the period he would be entitled to a leave to the extent of leave to his credit and in respect of the rest of the period it has got to be treated as leave without allowance. Therefore it is clear that according to the above Rules, the claim made by the petitioner that for the entire period he was entitled to full salary and allowances is untenable. He is entitled to have full pay and allowances only for a period of 24 months and as admittedly he has only half pay leave of 40 days to his credit he is entitled to the said leave after the expiry of 24 months and after the expiry of 24 months and 40 days the period of leave has to be treated as leave without allowance.

8. But as stated earlier, the question raised by the University is that the petitioner could not be regarded as a sponsored candidate and it was Rule 10 of Appendix II of the Rules which was applicable. That Rule reads:

"10. Government servants, who go abroad for higher studies at their own cost whose candidature is not sponsored by Government for grant of Scholarships and fellowships under foreign aid schemes coming under Rule 1(b) shall be granted leave at their credit and the remaining period of absence be treated as leave without allowance subject to a maximum period of two years on the whole in the case of post-graduate and other training courses and three years on the whole in the case of Ph.D., such period of absence counting for earning increments, pension and promotion provided the candidate is successful in all his examinations within that period and also subject to the provisions of Rule 244-A.

Provided that such Government servant shall satisfy the requirements of Rule 5."

The wording of that Rule itself makes it clear that the above Rule is applicable to a non-sponsored candidate. Therefore, if the petitioner was a sponsored candidate, Rule 10 could not be applied at all to the case of the petitioner.

9. In view of the documents extracted earlier, in the order, in particular Ex.A-1 the application of the petitioner for award of Government of India scholarship which the Registrar of the University forwarded to the Government of India having affixed his signature below the application in token of the sponsoring of the petitioner for study abroad and having also furnished an undertaking that the University would protect the conditions of service as a sponsored candidate, the conclusion which is inevitable is, that the petitioner was a sponsored candidate. This fact could not be changed by the Syndicate of the University by a resolution passed on 1st September, 1973, nearly after more than one year after the date of sponsorship. Further as pointed out earlier the fact that sponsorship certificate had been issued by the Registrar on 19-5-1972 was not disclosed in the note put up before the Syndicate. The execution of the agreement by the petitioner also supports his case that he was a sponsored candidate, for, Rule 7 of the Rules of Appendix II requires the execution of an agreement by a sponsored candidate only. A comparison of Rules 7 and 10 would show that an agreement is necessary only in a case falling under Rule 7 i.e., in the case of a sponsored candidate who secures certain financial benefits such as salary and also protection of promotional avenues and also qualifying service for grant of increment and promotion and no such agreement is necessary to be executed in respect of a non sponsored candidate falling under Rule 10 who goes on his own expenses abroad by applying for study leave.

10. In the result, I uphold the claim of the petitioner that he was a candidate sponsored by the University and therefore, he is governed by Rules 6 and 7 of Appendix II of the Rules as also the Rules regarding grant of leave set out in Annexure-3 to the said Appendix and reject the contention of the University that the petitioner was not a sponsored candidate.

11. In the result, I make the following order:

(i) The Writ Petition is allowed.

(ii) A direction shall issue to the University to treat the period of 24 months commencing from 25th September, 1973 during which period the petitioner had gone abroad for studies at Birmingham University as on duty/on special leave on full salary and to give him all the consequential arrears of salary.

(iii) The University shall be entitled to treat the period of 40 days after the expiry of the period of 24 months, after 25-9-1973 as leave on half pay and to extend to the petitioner only that portion of the salary to which he would be entitled to on the said basis.

(iv) The order of the University dated 26th September 1974, granting leave without allowance shall be effective only after the expiry of 24 months and 40 days from 25th September 1973, and the petitioner shall not be entitled to any emoluments during the said period subject to the condition that, that period shall also be regulated in accordance with Rule 6 of the Rules in Appendix II, as also the Rules in Annexure-B, to Appendix II of the Karnataka Civil Services Rules.

(v) The petitioner shall be entitled to the costs of the petition. Advocates fee quantified at Rs. 1,000/-.