
(2010) 05 P&H CK 0325
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. 2387 of 2008

MS. Punita Verma

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 18-05-2010

Acts Referred:

Haryana Affiliated Colleges (Security of Service) Rules, 1993 — Rule 11, 29, 30, 8.126, 8.137

Haryana Affiliated Colleges Leave Rules, 2002 — Rule 20, 23, 23(2), 4, 8

Citation : (2010) 2 ILR (P&H) 699

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—The petitioner, who was a Lecturer in the 3rd respondent College seeks for a direction for release of her salary for the period from 1st August, 2002 to 31st May, 2003 when she had gone on study Leave to Germany and also seeks for the release of increment withheld by the respondents that fell due to the petitioner on 1st July, 2003. The basis of the claim for the petitioner is that under the Maharishi Dayanand University Calendar Volume 3 under Rule 29 and 30 a teacher on study leave was fully entitled to full pay last drawn including allowance for two years and his/her rejoining the service, would be eligible to the benefit of annual increments.

2. The response on behalf of the respondents No. 1 to 5 to this contention is that the University Rules are applicable only to teaching staff and non-teaching staff of persons working at the University and a Lecturer in a college affiliated to the University is governed by distinct Act and Rules. The Act is Haryana Affiliated Colleges (Security of Service) Act, 1979 and the Rules are The Haryana Affiliated Colleges (Security of Service) Rules, 1993 and 2006 (hereinafter called the 1993 Rules and 2006 Rules) and Haryana Affiliated Colleges Leave Rules, 2002. The Rules of the year 2006 were notified only on 13th June, 2006 and since we are considering the issue of the entitlement of the pay during the study leave and the increments that she ought to have drawn on return on duty for a period prior

to the date of notification of the Rules 2006, we shall discard these Rules and referred to the Leave Rules of the year 2002 and the 1993 Rules. It is further contention on behalf of the respondents that the petitioner had specifically given an undertaking that she would not claim pay during the study leave and the study leave was accorded by the Managing Committee only after apprising her that the leave would be sanctioned only if she was prepared to forego leave salary. It is seen from the records placed by the petitioner herself that when she applied for grant of one year study leave for doing research at Germany to the Principal, it had been forwarded to the governing body of the college which had allowed to her the study leave for the period from 1st August, 2002 to 31st July, 2003 subject to the condition that if any substitute was appointed against her workload, she would have to pay the salary to the substitute and no LWP (Leave with Pay) will be extended. The certificate, which had been granted on 30th September, 2005 also reports that the study leave was granted only without pay. In her own letter written from Germany on 19th September, 2002, when she was seeking for permission to apply to UGC for research fellowship for study in Germany, she has stated that if her request for grant of study leave is not approved with pay, then she would be content with study leave without pay. The Chairman has made an endorsement on the letter of the petitioner to the Principal that the college would not pay salary or allowances and would not treat the petitioner as on duty leave as desired by her. The petitioner has also given an undertaking on 26th September, 2002 (P-10) that she shall not claim any salary from the college for the period 2003 and 2004 and would agree to avail study leave without pay. She has stated in the undertaking that she would first apply to the University for grant of study leave with pay and if it was not approved by the University then she would be content with study leave without pay. The University responded to her letter dated 6th July, 2002 (Annexure P-5) that any plea for study leave shall be applied only to the governing body of the college. The Principal herself appears to have forwarded the application for study leave with pay to the Deputy Director, Office of the Higher Education Commissioner, Haryana but the Higher Education Commissioner has responded to the Principal stating that the petitioner would be allowed only leave to kind due and if no leave was due she could be sanctioned leave without pay from 1st June, 2003 to 30th September, 2004.

3. The petitioner has engaged the Commissioner, Directorate of Higher Education in communication on 14th February, 2005 requesting for grant of leave with pay and explaining the nature of course that she had undertaken on her return from Germany. A response had been given by the Higher Education Commissioner that there was no provision for providing to her leave with pay towards the higher research studies as per the Rules. There are subsequent communications also but I do not propose to dwell at length since ultimately the claim for the leave with pay obtains only through writ petition filed in the year 2008. The learned counsel appearing for the State adverts to the fact that 1993 Rules, which were applicable to the petitioner only provides through Rule 11 that employees shall

be governed by the Leave Rules as laid down by the Government from time to time. This, according to the learned counsel. Shri Sharma would mean the applicability of Civil Service Rules as per the instructions issued by the Government of Haryana by its letter No. 11/99-ADU. 1(1) dated 8th January, 2000 in which the provisions regarding leave have been made in para 21. If the 1993 Rules merely provides for the application of the Rules as laid down by the Government, the learned counsel appearing for the petitioner would submit that the Government has not specifically set down any Rules till the year 2006 and therefore, it shall be wrong to assume that the Civil Service Rules would apply. I find that the language employed in Rule 11 is not happily worded but in the context in which it is used, it shall mean Leave Rules relating to service of Government servants. Between the year 1993 and 2006, there had been a hiatus and if 2006 Rules alone provided specifically the applicability of Leave Rules for private colleges it should only be assumed that the Government Service Rules would apply. Juxtaposing the Haryana Government Employees and Civil Service Rules with Rule 11 the learned counsel appearing for the State would refer to Rule 8.126 as governing the situation. Reference to study leave is as follows :

Rule 8.126-Study Leave

Leave may be granted to Government employees on such terms as may be prescribed by general or special orders of the competent authority 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.

Note.---For general orders issued under this rule see Appendix 20 in Part-II of this volume.

4. Learned counsel appearing for the petitioner even while challenging the correctness of the argument that Rule 8.126 would apply would point out that there is nothing in the said Rule, which prohibits the payment of salary during study leave and he also states that there was nothing which could prevent the Government from granting leave with pay-by reference to Rule 8.126. The fact however remains that the Government had not granted leave with pay and it had been denied even in the year 2003.

5. Since study leave with pay had not been granted, the learned counsel appearing for the State would contend that what was granted to the petitioner was only extra-ordinary leave, which are governed by Rule 8.137. The said Rules provides for extraordinary leave for a period of six months or in case if the Government employee has completed three years of continuous service for an extraordinary leave 12 months, it would be permissible only to provide for leave of the kind due. Referring to the fact that these Rules were applicable till the year 2002 when the Haryana Affiliated Leave Rules of 2002 were brought in the learned counsel refers to Rule 4 as governing the situation for application for grant of leave and Rule 20 as governing the grant of extraordinary leave. As per Rule 4 study leave shall be granted only by the Director Higher Education in

consultation with the Finance Department. The application for leave is governed by Rule 8. Rule 8(2) states that the nature of leave due and applied for by an employee cannot be altered at the option of the sanction of leave. So while it was open to the sanctioning authority to refuse or revoke leave due as applied for under this rule, it is not open to him to alter the nature of such leave. Clause 1 of Rule 8 reads as follows :

Leave cannot be claimed as a matter of right when the exigencies of service so require discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it.

In this context, it must be seen that the petitioner had therefore no right to expect to be granted leave and deserve a leave. An action of a college, which receives grant from the State shall be definitely reasonable and if they have refused the leave, the petitioner would have had a different line of action. On the other hand, if the petitioner herself had stated that she would apply to the University for grant of leave with pay and if it was not granted, she was prepared to consent to being granted leave without pay, then if the Managing Committee also accorded to her leave only without pay it shall be impermissible for the petitioner to turn around and say in the year 2008 that leave with pa)" must have been granted. Such a claim is untenable as the petitioner would be estopped from making such a plea. The claim is also stale having been brought about for beyond a period of three years. The claim for payment of salary during the study leave period is therefore, rejected.

6. As regards her entitlement to claim increment on her returning while she joined, learned counsel for the petitioner states that on rejoining duty, she was bound to be granted the increment, for the claim in the writ petition cannot be denied as regards the latter claim, since it is certainly not barred by laches. The petitioner's claim is rooted on her contention that as per the University Calendar Volume II, a person who is allowed study leave without pay would be entitled to rejoining duty to the normal increments for the period of such leave on production of satisfactory progress report. I have already observed that the applicability of the Rules of the University itself is not clearly established. It is the contention on behalf of the State that the University Calendar would be applicable to the staff of the University only. I have not been shown through any particular provision applying the Rules specified in the Calendar. The State's contention by communication from the Higher Education Commissioner to the Principal had been that the period of leave without pay towards higher research studies could not according to the Rules, be counted towards service benefits and consequently there could be no claim for increments as well. Learned counsel appearing for the petitioner relies on the UGC notification on revision of pay scales and referring to para 18.1.0. the contention is that the leave rules were laid down by the University Grants Commission may be followed for the University and college teachers as per Appendix VI. Appendix VI prescribes under Clause (x), the provisions relating to study leave. Sub-clause (ix) reads as

follows :

A teacher granted study leave shall on his/her return and rejoining the service of the university be eligible to the benefit of the annual increment(s) which he/she would have earned in the course of time if he/she had not proceeded on study leave. No teacher shall, however, be eligible to receive arrears of increments.

Rule 23 of the 2002 Rules provides as follows :

23. Study Leave.--(1) Study leave may be granted to an employee on such terms as may be specified by general or special orders of competent authority in consultation with the Director to enable him to study scientific, technical or similar problems or to undergo special courses of instructions. Such leave is not debited against any leave account and is subject to 12 months at a time or 24 months during full service. A certificate from the competent authority sanctioning leave is required that training would be definitely advantageous to employee in his academic career.

(2) During the study leave an employee would be entitled for leave salary equal to half pay. However where the salary of the substitute is reimbursed by University Grants Commission, the period may be allowed as leave with full pay and allowances only for the period for which the salary of the substitute is reimbursed by University Grants Commission and the remaining period, if any, will have to be treated under the provision of study or any other kind of leave due and permissible under these rules.

7. While it should have been perfectly possible that the petitioner could have been granted leave with salary equal of half pay provided under Rule 23(2), if it was not so provided on her undertaking given by the petitioner the petitioner cannot demand the same as of right but still, there is no clause which prohibits the claim to increments on return from stud) leave under any provision of the 2002 Rules. While the UGC Rules and the University Rules clearly provide for an entitlement normally of increments on rejoining duty. 2002 Rules do not prohibit the allowance of increments. On rejoining duty alter study leave, there is no provision under which such a right could have been denied to the petitioner and withholding of such increments by the 3rd respondent college and affirmed by respondent Nos. 1 and 2, in my view, not tenable.

8. It is informed at the time of arguments by the learned counsel that she has since left the college and joined elsewhere. The petitioner is entitled to calculation of the amount of increments that she ought to have been provided with and the same shall be calculated for the period upto which she was in service of the 3rd respondent and the same will be paid her within 8 weeks from the date of receipt of copy of the order. If the amount is not paid within the time prescribed, the same shall bear an interest @9% per annum.

9. The writ petition is disposed of on the above terms. There shall be however, no direction as to costs.