
(2013) 05 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9162 of 1992

Pro. Harkirat Joshi

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Citation : (2013) 3 SCT 755

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : Ram Lal Gupta, for the Appellant; Pankaj Mulwani, DAG, Punjab and Mr. Vivek Sharma, Advocate for Mr. D.S. Patwalia, Advocate for the Respondents No. 3 and 4, for the Respondent

Judgement

Rameshwar Singh Malik, J.—The short issue that arises for consideration of this Court is whether the petitioner was entitled for his salary w.e.f. 01.09.1989 to 31.08.1990 (study leave period for UGC fellowship), as he proceeded on duly sanctioned leave, under the University Grants Commission Teacher Fellowship Scheme, during seventh plan period. Petitioner was serving as Lecturer in English with respondent-college w.e.f. 10.08.1970. There have been no complaint against his work and conduct and the same had been found to be up to the mark. The respondent-college has pleaded that date of joining of the petitioner was 06.07.1971. The respondent-college was a privately managed grant-in-aid college, which was getting 95% grant-in-aid from the respondent-State, for the salary of the staff including the petitioner. When the petitioner was working with the respondent-college, he was found eligible for UGC fellowship under the Faculty Improvement Scheme of the University Grants Commission (for short "UGC")-Having been admitted to M.Phil for teacher fellowship at Punjabi University, Patiala, the petitioner submitted his application dated 29.08.1989 (Annexure P-2) to the Principal of respondent-college, requesting for relieving him and enabling the petitioner to pursue the course for one year and also for forwarding his application to UGC for approval. Application of the petitioner was recommended by the Principal and the competent authority granted the study

leave to the petitioner without pay w.e.f. 01.09.1989, for a period of one year, vide Annexure R-3/2. UGC granted ex-post-facto approval for awarding the teacher fellowship to the petitioner, to pursue his M.Phil degree for a period of one year w.e.f. 01.09.1989 at Punjabi University, Patiala, vide communication dated 17.01.1990(Annexure P-3). After receiving the communication (Annexure P-3), the respondent college passed resolution No. 20 dated 17.12.1990 (Annexure P-4) sanctioning the study leave of the petitioner with pay from 01.08.1989 to 31.07.1990.

2. The above said decision of the respondent-college was conveyed to Director of Public Instructions (Colleges), Punjab-respondent No. 2 vide letter dated 24.01.1991 (Annexure P-5). Petitioner moved an application dated 17.08.1991 (Annexure P-6) to the respondent college, seeking disbursement of his salary for one year, on account of study leave w.e.f. 01.09.1989 to 31.08.1990. When the petitioner did not get any response and he was pressing his demand for disbursement of his salary of the study leave period, respondent-college wrote to him vide letter dated 04.09.1991 (Annexure P-7), that his case was being sent again to the DPI Colleges, Punjab for reconsideration. However, the request of the respondent-college for releasing of 95% grant-in-aid on account of salary of the petitioner for the above said leave period was declined by respondent No. 2, vide communication dated 10.07.1991 (Annexure P-8). Further clarifying its stand, respondent-college wrote to the petitioner vide letter dated 23.01.1992 (Annexure P-9) that it had passed resolution No. 20 dated 17.12.1990 (Annexure P-4) in this regard. However, when nothing was coming out of the correspondence with the respondent-college, petitioner approached this Court by way of present writ petition, seeking a writ in the nature of certiorari for quashing of the impugned orders (Annexures P-7, 8 and 9), claiming that he was never at fault.

3. Notice of motion was issued and pursuant thereto written statement was filed on behalf of respondents No. 1 and 2. A separate written statement was filed on behalf of respondents No. 3 and 4.

4. Learned counsel for the petitioner submits that in view of the Teacher Fellowship Scheme issued by UGC vide Annexure P-1, the petitioner was found eligible for admission to M.Phil which he successfully completed. He further submits that the petitioner proceeded on study leave, after the same was duly sanctioned by the competent authority, vide Annexure R-3/2 but without pay at that point of time. However, once the UGC granted ex-post-facto approval vide its communication dated 17.01.1990 (Annexure P-3) and duly appreciated by the respondent-college by passing resolution No. 20 dated 17.12.1990 (Annexure P-4), which was forwarded to respondent No. 2 vide Annexure P-5, the respondent-State authorities were under legal obligation to release the 95% grant-in-aid, for the post held by the petitioner for the period of study leave of one year w.e.f. 01.09.1989 to 31.08.1990. He contended that the eligibility of the petitioner was never in dispute. Even otherwise, for some misunderstanding

or communication gap, which was amongst the respondents, petitioner cannot be made to suffer, as there were their inter-se mistakes. He next contended that since the amount of salary of the petitioner for a period of one year has been illegally withheld by the respondent authorities during all this long period, the petitioner was entitled for the same along with interest @ 24% per annum. He finally prays for setting aside the impugned orders and allowing the present writ petition.

5. Per contra, learned counsel for the State submits that the action of the respondent-State was fully justified on facts as well as in law. Once the leave of the petitioner was sanctioned without pay, 95% grant-in-aid for his salary for the period of one year, which was availed as study leave period by the petitioner, could not be released. It was made clear to the respondent-college, vide communication dated 10.07.1991 (Annexure P-8). Relying upon the preliminary objections of the written statement that has been filed on behalf of respondents No. 1 and 2, learned counsel for the State further submits that once the respondent-college did not appoint any substitute against the petitioner, the respondent-State was not under legal obligation to release 95% grant-in-aid for the post of the petitioner.

6. Learned counsel for respondents No. 3 and 4 submits that the respondent-college has made its stand clear, by writing to the respondent authorities for more than once, requesting for the release of 95% grant-in-aid for the post of the petitioner, for the period of his study leave of one year. But since the grant-in-aid was not released by the respondent-State authorities, salary of the petitioner for the period of his study leave could not be disbursed. Learned counsel for the respondents pray for the dismissal of the writ petition.

7. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the impugned orders cannot be sustained and the present writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

8. It has gone undisputed on record that petitioner was eligible for the UGC fellowship, for which he was admitted under the UGC Teacher Fellowship Scheme (Annexure P-1). Vide his application dated 29.08.1989 (Annexure P-2), petitioner requested the respondent authorities to relieve him, enabling him to join the M.Phil Course and also requested for forwarding his application to the UGC for approval of the fellowship under the Faculty Improvement Scheme. It is also not disputed that the UGC granted its ex-post-facto approval vide communication dated 17.01.1990 (Annexure P-3).

9. Thereafter, the respondent-college passed resolution No. 20 dated 17.12.1990 (Annexure P-4). Its earlier decision dated 29.08.1989 granting leave without pay to the petitioner, was reconsidered by the Management of the respondent-college

and resolution No. 20 dated 17.12.1990 (Annexure P-4) was passed, allowing the petitioner for UGC fellowship study leave with pay. It was brought to the notice of the respondent-State authorities vide communication dated 25.01.1991 (Annexure P-5).

10. Respondent-college again requested the respondent-State authorities for favourable reconsideration vide communication dated 04.09.1991 (Annexure P-7). However, it seems that respondent No. 2 did not consider the most material aspect of the matter that UGC has granted ex-post-facto approval for the study leave of the petitioner vide communication dated 17.01.1990 (Annexure P-3). This fact has not been considered by respondent No. 2 in its impugned communication dated 10.07.1991 (Annexure P-8). Having said that, this Court feels no hesitation to conclude that respondent No. 2 was duty bound to consider the release of 95% deficit grant-in-aid for the post of the petitioner for the period w.e.f. 01.09.1989 to 31.08.1990, during which he remained on duly sanctioned study leave. Thus, the impugned orders cannot be sustained.

11. During the course of arguments, learned counsel for the respondents failed to substantiate their arguments that the claim of the petitioner was not covered under the UGC Teacher Fellowship Scheme (Annexure P-1), particularly Clause-C thereof at page 20 of the paper book. Learned counsel for the respondents also failed to point out any fault with ex-post-facto approval granted by the UGC, vide communication dated 17.01.1990 (Annexure P-3), wherein other aspects of the matter were clarified including the salary of any substitute, if appointed.

12. In the present case, since no substitute in place of the petitioner was appointed by the respondent college, this issue has become redundant. Learned counsel for the respondents also could not point out as to why the case of the petitioner, for the purpose of releasing of 95% deficit grant-in-aid, was not considered in view of ex-post-facto approval granted by the UGC vide Annexure P3.

13. In this view of the undisputed fact situation of the present case, it is unhesitatingly held that the petitioner was never at fault and he has been made to suffer because of the misunderstanding or communication gap, if any, only amongst the respondents. This factual aspect of the matter has not been considered in the right perspective by the respondent-State authorities, while passing the impugned order dated 10.07.1991 (Annexure P-8).

14. Learned counsel for the State tried to justify the action of the State while relying upon Clause 18 of the terms and conditions of 95% deficit grant-in-aid. However, in the fact situation of the present case, Clause 18 of the 95% deficit grant-in-aid scheme is not applicable and the respondent-State authorities cannot justify their action relying upon this irrelevant Clause. The reason is that since the petitioner was on a duly sanctioned study leave, he could not have been physically present in the respondent-college, because of which Clause-18 of the 95% grant-in-aid scheme is not attracted. Under these circumstances, the

respondent State authorities as well as the respondent-college authorities have misdirected themselves while not disbursing the salary of the petitioner, for the period of his study leave w.e.f. 01.09.1989 to 31.08.1990. Thus, the action of respondent-authorities cannot be sustained, for this reason as well.

No other argument was raised.

15. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned orders cannot be sustained and the same are hereby ordered to be set aside.

16. Consequently, the respondent-State authorities are directed to release the 95% deficit grant-in-aid for the post held by the petitioner, for his study leave period w.e.f. 01.09.1989 to 31.08.1990, without any further loss of time. Since the petitioner has been found entitled for the disbursement of his salary for his study leave period and the amount thereof was being used by the respondent-State authorities, after illegally withholding the same, the 95% grant-in-aid for the post of the petitioner, shall be released by the respondent-State authorities along with simple interest @ 6% per annum. The respondent-college authorities are also directed to release the remaining 5% of the salary of the petitioner along with simple interest @ 6% per annum. Since the petitioner has already retired and is a senior citizen, the respondents are directed to disburse the salary amount of the petitioner, for the period of his study leave, at an early date but in any case within a period of three months from the date of receipt of a certified copy of this order.

Resultantly, the instant writ petition stands allowed, however, with no order as to costs.