

(2008) 04 MAD CK 0003

In the Madras High Court

Case No : W.A. (MD) No. 378 of 2008 and M.P. (MD) No. 2 of 2008

R. Udayakumar, Assistant Professor in Mechanical Engineering, rep. by his Power of Attorney Mrs. V. Sugandhi

APPELLANT

Vs

The National Institute of Technology

RESPONDENT

Date of Decision : 30-04-2008

Acts Referred:

Central Civil Services (Leave) Rules, 1972 — Rule 12, 7.1.1

Citation : (2008) 04 MAD CK 0003

Hon'ble Judges : S. Manikumar, J;R. Banumathi, J

Bench : Division Bench

Advocate : S.S. Senthil, for S. Chandrasekaran, for the Appellant;

Final Decision : Dismissed

Judgement

K. Banumathi, J.—Being aggrieved by the order of the learned Single Judge, dated 21.02.2008, dismissing the Writ Petition in W.P.(MD)

No. 10035/2007, the Writ Petitioner has preferred this Writ Appeal.

2. The short point involved in this Writ Appeal is whether an employee can claim and get leave as a matter of right.

3. The Appellant/Writ Petitioner, who was working as an Assistant Professor in Mechanical Engineering in the Respondents Institute, applied for

sabbatical leave on lien basis for a period of three years, citing contract appointment at BITS-Pilani, Dubai Campus. By the proceedings in

Al/512/2005, dated 10.09.2005, the then Director (i/c) sanctioned leave on loss of pay to the Appellant/Writ Petitioner for a period of two years

with a specific condition that no further extension of leave will be granted. In view of the request made by the Appellant/Writ Petitioner-by his letter

dated 20.10.2005, citing visa problem, he. was sanctioned leave on lien basis

from 01.11.2005 for two years, again reiterating that the leave was sanctioned with a strict condition that no further extension of leave will be granted.

4. The Appellant/Writ Petitioner requested the 2nd Respondent to extend the leave till June, 2008. According to the Appellant/Writ Petitioner, he has not received any reply till 07.11.2007. But, on 06.11.2007, he was informed that his leave on loss of pay for the period of two years has already been expired on 31.10.2007 and requesting him to join duty in NIT immediately and informing him that in the event of his failure to join duty, his services will be terminated as per the Rules. Again on 20.11.2007, the Institute informed the Appellant that his leave has already been expired and calling upon him to join duty in the Institute on or before 03.12.2007.

5. The Appellant/Writ Petitioner challenged the said proceedings dated 06.11.2007 and 20.11.2007 in W.P.(MD) No. 10035/2007. The Appellant challenged the impugned communications on the ground that certain other employees were granted leave beyond three years and that the Appellant alone is being discriminated. Further case of the Appellant was that he is entitled to five years leave as per the Central Government Leave Rules and the impugned communications calling upon him to join duty would amount to violation of fundamental rights of the Appellant.

6. Observing that the Appellant/Writ Petitioner cannot claim leave as a matter of right, the learned Single Judge has dismissed the Writ Petition. The learned Single Judge was of the view that paramount consideration would be the interest of the Institute, especially the students community, who need the services of efficient teachers.

7. Challenging the impugned communications, learned Counsel for the Appellant submitted that even after the Regional Engineering College, Trichy, has become National Institute of Technology, the Respondents have granted leave to one Vijayakumar for about three years and while so, the impugned proceedings are clearly discriminatory to the Appellant and liable to be set aside.

Drawing our attention to Rule 12 of the Central Civil Services Leave Rules, learned Counsel would contend that at any rate, the Appellant would be entitled to leave for a continuous period of five years.

8. We have carefully examined the records and considered the submissions.

9. Even in the proceedings sanctioning leave, dated 10.09.2005, the leave was sanctioned as per the existing Terms and Conditions, making it

clear that leave is granted for two years and no further extension of leave will be granted. Likewise, in the proceedings dated 26.10.2005, it was

again made clear that no further extension of leave will be granted.

10. Admittedly, the Appellant took up the foreign assignment with full knowledge that he was sanctioned leave only for a limited period of two

years with no further extension condition. In such circumstances, it was the duty of the Appellant to give a semester notice in advance for non-

availability to the Management of BITS-Pilani, Dubai Campus. From the perusal of the counter filed by the Respondents Institute, it is seen that

instead of giving a semester notice in advance, the Appellant waited for the leave period to expire and only upon the receipt of the communication

dated 06.11.2007 from NIT, the Appellant chose to apply for extension of leave, by his communication dated 15.11.2007, which was rejected by

the 3rd Respondent, by his proceedings dated 20.11.2007. The learned Single Judge, in his order, extracted Chapter 7 of the Rules and

Regulations governing the service conditions of the employees in National Institute of Technology. In Rule 7.1.1. of the said Rules, it is

categorically stated that leave cannot be claimed as a matter of right. When, as per the Rules, leave cannot be claimed as a matter of right, the

Appellant/Writ Petitioner, who is governed by the service conditions, cannot raise the contention that declining extension of leave would amount to

violation of his fundamental rights.

11. As rightly observed, by the learned Single Judge, getting leave is not a right of an employee. It is for the administration to decide in appropriate

cases about the period of leave and as to whether leave is to be granted or not. We concur with the observation of the learned Single Judge that in

an education institution like NIT, the paramount consideration would be the interest of the students community who need the services of efficient

faculty and teachers. The contention of the learned Counsel for the Appellant that the Appellant would be entitled to leave for a continuous period

of five years does not merit acceptance.

12. As we have pointed out earlier, leave was sanctioned to the Appellant on the

condition that no extension would be granted beyond two years.

Learned Counsel for the Appellant has contended that the institution has granted leave beyond three years to Various other persons. In the counter

affidavit, the Institution has averred that subsequent to its incorporation as NIT (National Institute of Technology), the Institute has not granted

leave for any faculty beyond the stipulated period of two years and the persons whom the Appellant has cited Have been made to resign. When

the Appellant was granted leave with specific terms and conditions that the leave will not be extended beyond two years, the Appellant cannot

complain of any discrimination. The Respondents Institution, being a well reputed institution in the Country, where the institution is imparting quality

higher education, it is the prerogative of the institution to act according to the exigency of the situation keeping in view the best interest of the

students and the administration As such, we do not find any reason warranting interference in the order of the learned Single Judge. It is not a fit

case for admission.

13. The Writ Appeal is accordingly dismissed. Connected M.P.(MD) No. 2 of 2008 is also dismissed.

14. After we have passed above order dismissing the Writ Appeal, the learned Counsel for the Appellant submitted that the services of the

Appellant itself was terminated and that he may be given the liberty to raise contentious issues in the proceedings where he is challenging the order

of termination. If that be so, he is at liberty to do so.