
(2023) 03 CAL CK 0022
In the Calcutta High Court
Case No : W.P.A. No. 8786 Of 2022

Rajesh K.V. Alias Rajesh Kaleerakath Venugopal	APPELLANT
Vs	
Visva-Bharati And Others	RESPONDENT

Date of Decision : 02-03-2023

Acts Referred:

Citation : (2023) 03 CAL CK 0022

Hon'ble Judges : Kausik Chanda, J

Bench : Single Bench

Advocate : Puspall Chakraborty, Prisanika Ganguly, Pranit Bag, Anuj Kumar Mishra

Final Decision : Allowed

Judgement

Kausik Chanda, J

1. The petitioner is an Assistant Professor in the Department of Drama at Visva-Bharati. The appointment letter of the petitioner dated February 20, 2012, provided, inter alia, that the terms and conditions of his service including leave will be governed by the Acts, Statutes, Ordinances, and the Rules of the University and as per directives of UGC/MHRD as may be enforced from time to time.
2. The petitioner was selected for a Senior Fellowship in Theater for 2019-2020 by the Ministry of Culture, Government of India, for a period of two years with effect from November 1, 2021.
3. As one of the conditions for grant of such fellowship, the petitioner was required to submit proof of leave obtained from his employer. The last date of submission of the project was November 30, 2021.
4. To avail of such fellowship, the petitioner applied for study leave before the Vice-Chancellor of Visva-Bharati by a letter dated December 13, 2021, and again, on April 7, 2022, he submitted another application for study leave through proper channel to the Executive Committee of Visva-Bharati.

5. The university declined to grant such study leave by a letter dated May 4, 2022, on the sole ground that as a suspended employee, the petitioner is not entitled to such leave in terms of Fundamental Rules- 55 (FR 55).

6. In this writ petition, the petitioner has challenged the said communication dated May 4, 2022.

7. It is not in dispute that against the petitioner, the university issued a charge sheet and by an order dated March 13, 2021, suspended him in connection with the said charge sheet.

8. The petitioner challenged the said disciplinary proceeding by filing WPA 1668 of 2022 (Rajesh K.V. alias Rajesh Kaleerakath Venugopal v. Visva-Bharati) and a Coordinate Bench of this Court by a judgment and order dated March 30, 2022, quashed the charge sheet dated February 27, 2021, and the order of suspension dated March 13, 2021.

9. An appeal was preferred by the Visva-Bharati against the said judgment and order dated March 30, 2022, and the appeal has not yet been disposed of.

10. On behalf of the petitioner it is submitted that he applied for study leave in terms of the UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018 (in short, the UGC Regulations, 2018) and Fundamental Rules are not applicable to the petitioner. As Visva-Bharati is a Central University and an autonomous body, it is bound by the UGC Regulations, 2018, and therefore, the rejection order based upon Fundamental Rule 55 cannot be sustained.

11. It has been contended on behalf of Visva-Bharati that grant of study leave is not a matter of right and thus, the application for study leave has been rightly rejected on the ground of suspension of the petitioner in terms of Fundamental Rule 55.

12. Visva-Bharati submits that the Executive Committee of the Visva-Bharati adopted a resolution on July 7, 1989, to the effect that Government of India Rules should apply to its employees in absence of the University Rules. It is, further, submitted that Visva-Bharati follows the instructions of the University Grants Commission issued on May 1, 2018, as per the Executive Committee resolution dated May 31, 2022. The UGC instructions dated May 1, 2018, mandate a university to follow Government of India Rules/Orders applicable to Central Government Employees till such time the Statutes/Ordinances and Regulations of the University are not framed. Visva-Bharati does not have its own leave rules. It adopted the leave conditions applicable to the Central Government employees in terms of the Executive Committee resolution dated July 7, 1989. The petitioner was noted to be governed by the Fundamental Rules and CCS (Leave Rules) of the Central Government Employees in terms of his appointment letter. As per University Grants Commission instruction dated May 1, 2018, the

university was obliged to follow the Rules/Orders applicable to Central Government employees.

13. It has been further submitted that the UGC Regulations, 2018, do not constitute a complete code for granting or denying study leave as a condition of service. The same merely provide for entitlement to leave which will be apparent from the fact that the UGC Regulations, 2018, do not encompass all aspects of service conditions. It was never the object behind the framing of UGC Regulations, 2018, to substitute University Grants Commission in place of universities to decide leave applications. Moreover, the UGC Regulations, 2018 do not override the applicability of Fundamental Rules to the academic staff of universities since the latter applies in the field of law dealing with leave applications, while the former only provides for the entitlement to leave.

14. Hence, Visva-Bharati has rightly rejected the study leave of the petitioner during the period of his suspension.

15. It has, further, been submitted that as a matter of right, leave cannot be granted due to a variety of factors including the interest of the students.

16. I am of the view that the impugned order dated May 4, 2022, issued by the Acting Registrar of Visva-Bharati is misconceived and cannot be sustained. The appointment letter of the petitioner clearly indicated that the terms and conditions of his service including leave would be governed by the Acts, Statutes, Ordinances, and the Rules of the University as well as the directives of UGC/MHRD as may be enforced from time to time.

17. UGC Regulations, 2018, are applicable to the Visva-Bharati by operation of clause 1.2 of the UGC Regulations, 2018. The Executive Committee of Visva-Bharati also took a resolution on July 7, 1989, to follow the UGC instructions in absence of its own Rules.

18. In my opinion, the Regulations of 2018 not only address the entitlement to leave but also the way in which leave applications are to be dealt with. I do not accept the university's contention that the Regulations only concern the entitlement to leave.

19. A bare reading of clause 8 of the said UGC Regulations, 2018, under the heading Duty leave, Study leave, Sabbatical leave and under the different sub-headings leave no room for doubt that the UGC Regulations, 2018, provide for an exhaustive, elaborate and wholesome leave rules.

20. By way of an example and illustration, the relevant parts of the said UGC Regulations, 2018, under the heading "Study Leave" are quoted below:

"8.2 STUDY LEAVE:

i. The scheme of Study Leave provides an opportunity to avail of scholarships/fellowships awarded to the faculty who wish to acquire new knowledge and to improve analytical skills. When a teacher is awarded a scholarship or stipend (by

whatever nomenclature called), for pursuing further studies, leading to a Ph.D./ Post- doctoral qualification or for undertaking a research project in a higher education institution abroad, the amount of the scholarship/fellowship shall not be linked to the recipient's pay/salary paid to him/her by his /her parent institution. The awardee shall be paid salary for the entire duration of fellowship/ scholarship, provided, that he/she does not take up any other remunerative jobs, like teaching, in the host country.

ii. A teacher on Study Leave shall not take up, during the period of that leave, any regular or part-time appointment under an organisation in India or abroad. He/she may, however, be allowed to accept a fellowship or a research scholarship or an ad-hoc teaching and research assignment with an honorarium or any other form of assistance, other than the regular employment in an institution either in India or abroad, provided, that the Executive Council/Syndicate of his/her parent institution may, if it so desires, sanction study leave on reduced pay and allowances to the extent of any receipt in this regard, in-lieu of teaching etc., which may be determined by his/her employer.

iii. The study leave shall be granted to an entry-level appointee as Assistant Professor/Assistant Librarian/Assistant Director of Physical Education and Sport/ College DPE&S (other than as Associate Professor or Professor of a University/ College/Institution, who is otherwise eligible for sabbatical leave) after a minimum of three years of continuous service, to pursue a special line of study or research directly related to his/her work in the University/College/Institution or to make a special study of the various aspects of University organisation and methods of education, giving full plan of the work.

iv. The study leave shall be granted by the Executive Council/Syndicate on the recommendation of the Head of the Department concerned. The leave shall not be granted for more than three years in one spell, save in exceptional cases, in which the Executive Council/Syndicate is satisfied that such extension is unavoidable on academic grounds and necessary in the interest of the University/ College/Institution.

v. The study leave shall not be granted to a teacher who is due to retire within five years of the date on which he/she is expected to return to duty after the expiry of study leave.

vi. The study leave shall be granted not more than twice during one's entire career. However, the maximum period of study leave admissible during the entire service shall not exceed five years. vii. The study leave may be granted more than once, provided, that not less than five years have elapsed after the teacher/ returned to duty on completion of the earlier spell of study leave. For subsequent spell of study leave, the teacher shall indicate the work done during the period of earlier leave as also give details of work to be done during the proposed spell of study leave. viii. No teacher who has been granted study leave shall be permitted to alter substantially the course of study or the programme of research without

the permission of the Executive Council/Syndicate, in the event the course of study falls short of study leave sanctioned, the teacher shall resume duty on the conclusion of the course of study unless the previous approval of the Executive Council/Syndicate to treat the period of shortfall as Extra-Ordinary leave has been obtained. ix. Subject to the maximum period of absence from duty, on leave not exceeding three years, the study leave may be combined with the earned leave, half-pay leave, extra-ordinary leave of vacation provided that the earned leave at the credit of the teacher shall be availed of at the discretion of the teacher. When the study leave is taken in continuation of vacation, the period of study leave shall be deemed to begin to run on the expiry of the vacation. A teacher, who is selected to a higher post during the study leave, shall be placed in that position and shall get the higher scale only after joining the post. x. The period of study leave shall count as service for purpose of the retirement benefits (pension/contributory provident fund), provided that the teacher rejoins the University/College/Institution on the expiry of his/her study leave, and serve the institution for the period for which the Bond has been executed. xi. The study leave granted to a teacher shall be deemed to have been cancelled in case it is not availed of within 12 months of its sanction, provided, that where the study leave granted has been so cancelled. The teacher may apply again for such leave. xii. A teacher availing himself/herself of the study leave, shall undertake that he/she shall serve the University/College/Institution for a continuous period of at least three years to be calculated from the date of his/her resuming duty on the expiry of the study leave.

xiii. A teacher –

(a) who is unable to complete his/her studies within the period of study leave granted to him/her or

(b) who fails to rejoin the services of the University on the expiry of his/her study leave or

(c) who rejoins the service of the university but leaves the service without completing the prescribed period of service after rejoining the service or

(d) who, within the said period, is dismissed or removed from the service by the University shall be liable to refund, to the University/College/Institution, the amount of the leave salary and allowances and other expenses, incurred on the teacher or paid to him/her or on his/her behalf in connection with the course of study.

Explanation:

If a teacher asks for extension of the study leave and is not granted the extension but does not rejoin duty on the expiry of the leave originally sanctioned, he/she shall be deemed to have failed to rejoin the service on the expiry of his/her leave for the purpose of recovery of dues under these Regulations. Notwithstanding the above provision, the Executive Council/

Syndicate may order that nothing in these Regulations shall apply to a teacher who, within three years of return to duty from study leave is permitted to retire from service on medical grounds, provided further that the Executive Council/Syndicate may, in any other exceptional case, waive or reduce, for reasons to be recorded the amount refundable by a teacher under these Regulations.

xiv. After the leave has been sanctioned, the teacher shall, before availing himself/herself of the leave, execute a bond in favour of the University/College/Institution, binding himself/herself for the due fulfillment of the conditions laid down in paragraph (x) to (xiii) above and give security of immovable property to the satisfaction of the Finance Officer/Treasurer or a fidelity bond of an insurance company or a guarantee by a scheduled bank or furnish security of two permanent teachers for the amount which might become refundable to the University/College/Institutions in accordance with paragraph (x) to (xiii) above.

xv. The teacher on study leave shall submit to the Registrar/Principal of his/her parent University/College/Institution six-monthly reports of progress in his/her studies from his/her supervisor or the Head of the institution. Such report shall reach the Registrar/Principal within one month of the expiry of every six months of the period of the study leave. If the report does not reach the Registrar/Principal within the specified time, the payment of leave salary may be deferred till the receipt of such report.

xvi. The teacher on leave shall submit a comprehensive report on the completion of the study leave period. A copy of the research document/monograph/academic paper produced during the period of the study leave shall be put in the public domain, preferably on the website of the University/College/Institution.

xvii. With a view to enhancing the knowledge and skills of the faculty members, especially the junior faculty, at the level of Assistant Professor, the Heads of universities/Colleges/Institutions and their subordinate Departments are enjoined to be generous in the award of study leave in the interest of faculty improvement, thereby impacting the academic standards of the University/College/Institution in the long run."

21. In my view, the said UGC Regulations, 2018, provide for an exhaustive set of leave rules when Visva-Bharati does not have its own. There cannot be any doubt that the provisions for leave contained in UGC Regulations, 2018, shall apply to the petitioner.

22. Though it has been submitted by the university that UGC Regulations, 2018, is silent as to how a suspended employee's leave application has to be dealt with, I am of the view that the answer can be traced to clause 8.2 (Xiii) (d) of the said Regulations, which pertains to study leave. The relevant part of the said UGC Regulations, 2018, is quoted below:

" 8.2 STUDY LEAVE

...(d) who, within the said period, is dismissed or removed from the service by

the University shall be liable to refund, to the University/College/Institution, the amount of the leave salary and allowances and other expenses, incurred on the teacher or paid to him/her or on his/her behalf in connection with the course of study.”

23. In my view, the said clause duly outlines the course of action to be taken in the event where a disciplinary action has been initiated against a teacher. The said rule does not authorise the university to revoke any leave benefit where a disciplinary proceeding is contemplated or initiated against a teacher. It is only when a teacher is dismissed or removed from service that he becomes liable to refund the amount of the leave salary and allowances and other expenses incurred in connection with his study.

24. It is equally important to note that when the petitioner made his application on April 7, 2022, there had been no suspension order issued against the petitioner in the eye of law since the same had been quashed by a Coordinate Bench of this Court on March 30, 2022. The Appeal Court has not, to date, granted any stay order against the order of the learned Single Bench.

25. Therefore, the ground of suspension as taken in the order impugned also cannot be sustained.

26. I am of the view that reliance by the Visva-Bharati on Fundamental Rules-55 is unjustified. Therefore, the order impugned dated May 4, 2022, is set aside. The university shall immediately, not later than seven days from date, grant the study leave as prayed for by the petitioner.

27. It is expected that the Centre for Cultural Resources and Training shall consider the extension of the period of Fellowship in question, if required, having regard to the time consumed in this legal proceeding.

28. Accordingly, W.P.A. No. 8786 of 2022 is allowed.

29. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.