

(2013) 07 SC CK 0050

In the Supreme Court Of India

Case No : Civil Appeal No. 5828 of 2013 (Arising out of SLP (C) No. 39067 of 2012)

Sant Longowal Instt. of Engg. and Tech. and Another

APPELLANT

Vs

Suresh Chandra Verma

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Central Civil Services (Leave) Rules, 1972 — Rule 53(1), 53(5), 63

Citation : (2014) 2 AD 124 : AIR 2013 SC 3311 : (2013) 4 AJR 534 : (2013) 4 JLJR 178 : (2013) 9 JT 572 : (2013) LabIC 3312 : (2013) 3 LLN 432 : (2013) 4 PLJR 312 : (2013) 9 SCALE 489 : (2013) 10 SCC 411 : (2014) 1 SCC(L&S) 738 : (2013) 4 SCT 1

Hon'ble Judges : Pinaki Chandra Ghose, J;K.S. Panicker Radhakrishnan, J

Bench : Division Bench

Advocate : Ajay Jain, B.N. Gaur and Jintendra Jain, for the Appellant; Himanshu Shekhar, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Panicker Radhakrishnan, J.—Leave granted.

2. The question that has come up for consideration in this appeal is whether the Appellant-institute is justified, in directing the Respondent to refund the entire amount of Rs. 12,32,126/- paid to him towards salary and other allowances for pursuing Ph.D studies at IIT, Kanpur, on failure to produce the certificate of obtaining the Ph.D, for which study leave was granted.

3. The Appellant-institute was established by the Ministry of Human Resource & Development, Government of India in the year 1989 and has been fully funded by the Central Government. The Respondent joined the service in the Appellant-institute as Lecturer in Mechanical Engineering on 30.08.1993. He applied for grant of study leave for pursuing his Ph.D at IIT, Kanpur. The competent authority acceded to that request and granted three years study leave commencing from 24.07.1999 to 22.07.2002. The Respondent after executing

necessary bond proceeded on study leave on 24.07.1999 and three years period was completed on 24.07.2002. Due to various reasons, the Respondent could not complete his Ph.D studies and he joined back in service as Lecturer in the Institute in November 2003. The Respondent was asked to produce the completion certificate of the Ph.D course which Respondent could not produce, hence, the Appellant-institute demanded the refund of the amount of Rs. 12,32,126/- paid to him during the period of study for pursuing Ph.D as per the terms and conditions of bond executed by the Respondent.

4. Aggrieved by the steps taken by the Appellant-institute to recover the amount, the Respondent filed Civil Writ Petition No. 12555 of 2010 before the High Court of Punjab and Haryana. Writ Petition was allowed by learned Single Judge vide judgment dated 02.02.2012 quashing the demand notice and also ordered refund of the amount already recovered with interest from the Respondent.

5. Aggrieved by the same, the Appellant preferred LPA No. 363 of 2012 before the Division Bench of the High Court of Punjab & Haryana and the High Court vide judgment dated 23.08.2012 took the view that the Appellant could not point out any term in the bond executed by the Respondent that he had to complete the Ph.D programme within a period of three years and that the only condition was that the Respondent had to serve for a period of six years after joining service on the expiry of the study leave. The appeal was dismissed by the Division Bench of the High Court.

6. Aggrieved by the judgment of the Division Bench of the High Court, this appeal has been preferred.

7. Shri Ajay Jain, learned Counsel appearing for the Appellant submitted that the High Court has completely misunderstood terms and conditions on which the Respondent was granted study leave which is reflected in the bond executed by the Respondent on 5.05.1999. Learned Counsel submitted that the High Court has completely ignored the salutary principle of "no work no pay" and that the Respondent during the period of study not only not worked in the Appellant-institute but also was not successful in obtaining the Ph.D. Consequently, neither the institute, the Respondent nor the students have been benefited and public money has been spent for no use.

8. Shri Himanshu Shekhar, learned Counsel for the Respondent, on the other hand, submitted that he has completed his course work required for the Ph.D programme, completed comprehensive examination etc. But the thesis could not be completed due to retirement of the guide. Further, it was pointed out that the Respondent had also made a written request on 24.05.2002 seeking extension of six months period so that the Respondent could complete his thesis work. Another representation was made on 04.06.2002 and all those representations left unattended. Under such circumstances, he had to join duty without obtaining Ph.D. Learned Counsel also pointed out that similarly situated employee named Abanish Kumar Singh was provided extension of time but the same was not done

in the case of the Respondent. Further, it was pointed out that there is no condition in the bond that if the Respondent could not complete the Ph.D then the entire salary and other benefits could be recovered from the Respondent. Learned Counsel pointed out that the High Court has rightly interpreted terms and conditions of bond, consequently the demand made for the reimbursement of the salary and other allowances is not justified.

9. We have gone through terms and conditions of the bond executed by the Respondent on 05.05.1999. Some of the relevant portions of the bond read as follows:

Whereas I, Suresh Chandra Varma, am granted (kind of leave) by the Institute.

And whereas for the better protection of the Institute, I have agreed to execute this Bond with such conditions as hereunder is written.

Now the condition of the above written obligation is that in the event of my failing of resume duty, or resigning or retiring from service or otherwise quitting service without returning from duty after the expiry of termination of the period of study leave or at any time within a period of three years after my return to duty, I shall forthwith pay to the institute or as may be directed by the Institute, on demand, pay & allowances received by me during study leave, the said amount of Rs. 10,000/- (ten thousand only) together with interest thereon from the date of demand at Govt. Rates for the time being in force on Govt. Loan.

And upon my making such payment the above written obligation shall be avoided and of no effect, otherwise I shall be and remain in full force and virtue.

The bond shall in all respects be governed by the laws of India for the time being in force and the rights and liabilities hereunder shall, where necessary, be accordingly determined by the appropriate courts in India.

10. Further, it is the specific case of the Appellant that the Respondent herein is governed by the provisions of the Central Civil Services (Leave) Rules, 1972 forming part of the Fundamental Rules and Supplementary Rules, Part III framed by the Constitution of India. We notice there is no clear cut provision in the bond either expressly referring to Rule 63 or strictly imposing a condition that if a candidate fails to complete the course study during the period of sanctioned leave, he will have to refund to the Appellant-institute the total amount of leave, salary and other benefits availed of by him during the period of study leave.

11. Of late, such a specific provision was incorporated in bond by the Board of Governors of the Appellant-institute in its 22nd meeting held on 28.06.2002, which reads as follows:

TO APPROVE THE AMENDMENT IN BOND CONDITIONS TO BE EXECUTED BY THE FACULTY MEMBERS WHILE PROCEEDING ON STUDY LEAVE.

The Board of Governors of the Institute in its 22nd meeting held on 28.06.2002 decided that a faculty member, who is granted study leave for possessing higher

education such as M.E./M. Tech. And Ph.D, he/she is required to execute a bond to serve the Institute for double the period of study leave after returning from study leave.

The conditions of the bond are silent on the point when a faculty member resume his/her duty but fails to produce the educational qualifying certificate for which he/she was sanctioned study leave.

Following provision may kindly be allowed to be incorporated in the proforma of bond to be executed by a faculty member while proceeding on study leave/extra ordinary leave of study/special leave for training/sabbatical leave on the pattern of Central Government Rules to avoid legal complicity.

12. The above mentioned clause was inserted in the absence of a specific clause to that effect in the bond executed by the faculty members.

13. The question as to whether Rule 63 referred to above is also applicable to the Respondent was not seen specifically urged by the Appellant-institute either before the learned Single Judge or before the Division Bench, hence, the High Court had no occasion to examine its applicability. In this connection, we may refer to Rule 63 which reads as follows:

63. Resignation or retirement after study leave or non-completion of the course of study.

(1) If a Government servant resigns or retires from service or otherwise quits service without returning to duty after a period of study leave or within a period of three years after such return to duty or fails to complete the course of study and is thus unable to furnish the certificate as required under Sub-rule (5) of Rule 53 he shall be required to refund-

(i) The actual amount of leave salary, study allowance, cost of fees, travelling and other expenses, if any, incurred by the Government of India; and

(ii) The actual amount, if any, of the cost incurred by other agencies such as foreign Government, Foundations and Trusts in connection with the course of study, together with interest thereon at rates for the time being in force on Government loans from the date of demand, before his resignation is accepted or permission to retire is granted or his quitting service otherwise:

(iii) Provided that except in the case of employees who fail to complete the course of study nothing in this rule shall apply -

(a) To a Government servant who, after return to duty from study leave, is permitted to retire from service on medical grounds; or

(b) To a Government servant who, after return to duty from study leave, is deputed to serve in any Statutory or Autonomous Body or Institution under the control of the Government and is subsequently permitted to resign from service under the Government with a view to his permanent absorption in the said

Statutory or Autonomous body or Institution in the public interest.

(2) (a) The study leave availed of by such Government servant shall be converted into regular leave standing at his credit on the date on which the study leave commenced, any regular leave taken in continuation of study leave being suitably adjusted for the purpose and the balance of the period of study leave, if any, which cannot be so converted, treated as extraordinary leave.

(b) In addition to the amount to be refunded by the Government servant under Sub-rule (1), he shall be required to refund any excess of leave salary actually drawn over the leave salary admissible on conversion of the study leave.

(3) Notwithstanding anything contained in this rule, the President may, if it is necessary or expedient to do so, either in public interest or having regard to the peculiar circumstances of the case or class of cases, by order, waive or reduce the amount required to be refunded under Sub-rule (1) by the Government servant concerned or class of Government servant.

14. If a Government servant resigns or retires from service or otherwise quits service without returning to duty after a period of study leave or within a period of three years after such return to duty or fails to complete the course of study and is thus unable to furnish the certificates as required under Sub-rule (5) of Rule 53, he shall be required to refund the actual amount of leave salary, study allowance, cost of fees, travelling and other expenses, if any, incurred by the Government of India.

15. The above mentioned provision has a laudable object to achieve. A Government servant or person like the Respondent is given study leave with salary and allowances etc. So as to enable him to complete the course of study and to furnish the certificate of his successful completion, so that the institute which has sanctioned the study leave would achieve the purpose and object for granting such study leave. The purpose of granting study leave with salary and other benefits is for the interest of the Institution and also the person concerned so that once he comes back and joins the institute the students will be benefited by the knowledge and expertise acquired by the person at the expense of the institute. A candidate who avails of leave but takes no interest to complete the course and does not furnish the certificate to that effect is doing a disservice to the institute as well as the students of the institute. In other words, such a person only enjoys the period of study leave without doing any work at the institute and, at the same time, enjoys the salary and other benefits, which is evidentially not in public interest. Public money cannot be spent unless there is mutual benefit. Further, if the period of study leave was not extended or no decision was taken on his representation, he could have raised his grievances at the appropriate forum.

16. We notice that the Appellant-institute has already recovered an amount of Rs. 6.5 lacs as monthly installments from the salary of the Respondent and the Appellant-institute has also recovered an amount of Rs. 1,75,000/- from the

salary of the Respondent and Rs. 4,75,000/- from the arrears of revised scales admissible to the Respondent with effect from 01.01.2006 and as such approximately Rs. 6,50,000/- has been recovered from the Respondent. Now the Appellant-institute claims balance amount of Rs. 6,18,000/-.

17. Considering the facts and circumstances of the case and considering the fact that the bond executed by the Respondent is found to be vague, we find no reason for the Appellant-institute to recover the balance amount of Rs. 6,18,000/- from the Respondent but the amount already recovered be not refunded, since public interest has definitely suffered due to non-obtaining of Ph.D by the Respondent after availing of the entire salary and other benefits. We do so taking into consideration all aspects of the matter and to do complete justice between the parties.

18. Appeal is allowed to the above extent and the judgment of the learned Single Judge and Division Bench is modified accordingly and no further amount be recovered by the Appellant-institute from the Respondent.