
(2021) 02 UK CK 0085

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 166 Of 2021

Sanyogita Kumari

APPELLANT

Vs

State Of Uttarakhand & Another

RESPONDENT

Date of Decision : 25-02-2021

Acts Referred:

Citation : (2021) 02 UK CK 0085

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : Siddhartha Singh, P.S. Bisht, Parikshit Saini

Final Decision : Allowed

Judgement

Ravindra Maithani, J

1. The petitioner seeks following reliefs:-

â?? (i) To issue a writ, order or direction in the nature of certiorari quashing the order dated 23.12.2020, 11.01.2021 (Annexure No.1, 2) passed by

respondent no.2, refusing to grant NOC to the petitioner for undertaking PhD. Course.

(ii) To issue a writ, order or direction in the nature of mandamus commanding respondent no.2 to issue NOC to the petitioner for pursuing PhD.

Course.â??

2. It is the case of the petitioner that she was appointed as Lecturer (Geography) in KL DAV Inter College, Roorkee (for short â??the Collegeâ?) on

12.08.2013. Her appointment was challenged in one of the writ petition, which was dismissed. Thereafter again, an inquiry by a Special Investigation

Team (in short â??SITâ?) was conducted. The petitioner challenged that inquiry report in a writ petition, which is still pending and in which status

quo order has been passed. But again the petitioner was suspended based on the same inquiry report of SIT, which has further been challenged by the petitioner in a writ petition, which is still pending.

3. The origin of the instant controversy is that the petitioner wanted to pursue her PhD. Course from Kumaun University, Nainital. She applied for the same and she was selected. The petitioner was required to submit the No Objection Certificate (in short "NOC") from the College. The college vide communications dated 23.12.2020 and 11.01.2021 declined for NOC on the grounds that since in a departmental inquiry, administrative inquiry and SIT investigation, the petitioner was found guilty of securing job by forging the documents and she is under suspension and facing departmental inquiry, therefore, NOC shall not be granted to her.

4. The petitioner challenges these two communications of the college and also seeks that respondent no.2 may be directed to issue NOC, so that the she may pursue her PhD. course.

5. Heard learned counsel for the parties and perused the record.

6. Learned counsel for the petitioner would submit the chronology of the events, which is as hereunder:-

(i) The petitioner's appointment was initially challenged in a writ petition being WPSS No.1578 of 2015 "Amit Kumar Vs. State of Uttarakhand and others", which was dismissed on 09.05.2017.

(ii) SIT has conducted an inquiry and submitted an inquiry report dated 24.12.2019 which was challenged by the petitioner in WPSS No.112 of 2020 "Smt. Sanyogita Kumari Vs. State of Uttarakhand and others", in which status quo order was passed on 10.01.2020.

(iii) Despite status quo order, petitioner was placed under suspension, which she challenged in writ petition being WPSS No.476 of 2020 "Smt.

Sanyogita Kumari Vs. State and others", which is pending for adjudication.

7. The suspension of the petitioner is not in accordance with the Rules because approval of the competent authority has not been taken within sixty days, and by fiction of law, the suspension order seems to be bad.

8. It is argued that the petitioner now intends to pursue her PhD. course, for which she requires NOC from the college, but the college without any reasonable cause declined to grant NOC to the petitioner.

9. On behalf of the respondents, learned counsel would submit that in the writ petition challenging the suspension order, no interim order has been

rendered; the petitioner is under suspension and disciplinary proceedings are pending against her, in which she is not cooperating at all. The petitioner

is directed not to leave the station, but she has left the station due to which departmental proceedings could not proceed. It is also argued that, in fact,

the respondents are not the appointing authority and the competent authority has not been impleaded in the writ petition.

10. During the course of hearing, learned counsel for the petitioner would submit that in fact the petitioner has appeared in the interview of PhD.

course and she has been declared successful. Now she has to complete all the formalities for admission, therefore, she needs NOC as well as study

leave. Learned counsel for the petitioner submits that, according to the instructions available, the petitioner has to take at least six months regular leave

to pursue her PhD. course.

11. Learned counsel for the respondent no.2 would submit that in fact on 23.02.2021 the petitioner has sought for one year study leave, for which she

is not entitled because she is yet not permanent at her post. It is submitted that for availing study leave, one has to be a regular employee.

12. As stated, petitioner in the instant case is aggrieved by two communications dated 23.12.2020 and 11.01.2021 of the respondent no.2, by which

NOC has been denied to the petitioner on the ground, namely, (i) disciplinary proceedings are pending against petitioner and she is under suspension,

(ii) she secured service by committing forgery and by concealing facts, which has been proved in the administrative inquiry and departmental inquiry.

13. The continuation of the departmental inquiry may not prevent one to pursue such study as the petitioner is trying to avail and for this reason, this

Court is of the view that NOC may not be denied. Respondent no.2 has within law every right to proceed departmentally against any person who

commits any wrong which may make him liable for departmental punishment. Admittedly, till date, the petitioner is an employee with the College. She

is under suspension. Although, according to the petitioner, since approval for the suspension has not been obtained within sixty days, the suspension

ceases to have effect.

14. The subsequent development as informed is that the petitioner has been

declared successful for the PhD. course. Having considered the rival submissions, this Court is of the view that to the limited extent of the relief prayed for in this writ petition, the petition may be allowed and the respondent no.2 may be directed to issue NOC to the petitioner to pursue her PhD. course. But so far as the question of grant of study leave is concerned, for which according to the learned counsel for the respondent no.2, an application has already been received from the petitioner on 23.02.2021, the respondent no.2 is free to decide it independently in accordance with existing Rules. Grant of NOC shall have no bearing on consideration of the study leave application of the petitioner. It shall be independently considered. To that extent, the writ petition deserves to be allowed.

15. The writ petition is allowed. Respondent no.2 is directed to issue NOC to the petitioner to pursue her PhD. course. The question of study leave is still pending. The respondent no.2 may mention this fact in the NOC itself. Since the study leave application, according to the respondent no.2, has already been received, the respondent no.2 shall decide this application in accordance with the existing Rules.

16. The grant of NOC, as indicated hereinabove, shall not prevent in any manner the ongoing departmental proceedings against the petitioner.

17. Let a certified copy of this order be supplied today itself on payment of usual charges.