
(2003) 06 OHC CK 0010
In the Orissa High Court
Case No : O.J.C. No. 12660 of 1997

Sri Debajyoti Misra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 17-06-2003

Acts Referred:

Citation : (2003) 06 OHC CK 0010

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : K.P. Mishra and B.S. Mishra, for the Appellant; R.K. Mohapatra, R.K. Dash, D.P. Das, A.K. Parida and D.R. Swain for O.P. No. 2 Addl. Stg. Counsel for O.P. 1 and 3, for the Respondent

Judgement

P.K. Tripathy, J.—Petitioner a lecturer in Electronics Engineering in Utkalmani Gapabahdhu Institute of Engineering, Rourkela (in short "UGIB") has filed this writ application for issuing a direction to the opposite parties 1 to 3 to pass necessary order for granting study leave to the Petitioner for undertaking his Master Degree Course in Electrical Engineering during the session 1997-98. In that respect, grievance of the Petitioner is that though as a sponsored candidate (i.e. a candidate sponsored by the employer) he stood first for getting admission, yet the opposite party No. 3 wilfully and purposefully avoided to grant the study leave. His further contention is that in the meantime, he took admission furnishing an undertaking to obtain the leave of the employer. Petitioner, therefore, filed original application No. 1784 of 1997 in Orissa Administrative Tribunal and learned Administrative Member of the Tribunal On 21.8.1997 disposed of that application as it appears without hearing the State or opposite party No. 3, but directing the opposite party No. 1 to examine the representations and to communicate the decision to the Petitioner regarding sanction of study leave within one week from the date of receipt of copy of that order. Petitioner alleges that notwithstanding that order of the Tribunal no order was passed by the opposite party members 1 and 3 relating to grant of study leave and because of that situation admission taken by him would be terminated

and accordingly he prayed for interference of this Court by invoking the writ jurisdiction. Petitioner stated that direction to the opposite party No. 2 to not to re-admit him being not within the competency of the Orissa Administrative Tribunal, therefore, he has preferred this writ application.

2. Nowhere Petitioner states as to on which date he communicated a copy of the order of the Administrative Tribunal by serving the same on the opposite party members 1 and 3.

3. It appears from Annexure-4 that the Administrative Tribunal passed the order on 21.8.1997 and this writ application was presented in this Court on 4.9.1997. In the counter affidavit of the opposite parties 1 to 3 also they have not stated about receipt of a copy of order Annexure-4 and the date, if any, thereof.

4. Opposite parties 1 to 3 filed counter affidavit on 31.10.1997. In that counter affidavit the deponent, a Senior Lecturer of UGIE has stated that Petitioner being the junior most lecturer in the cadre having joined in service on 1.6.1992 and his position in the gradation list being in serial No. 28 therefore he was not preferred to be granted with study leave when senior lecturers were applicants and their applications had been forwarded. It is further stated in the counter affidavit that in exigencies of service and not to affect the teaching facilities to the students Petitioner's application for study leave was rejected. That fact has also been admitted by the Petitioner in a rejoinder filed later on but he has challenged to the bona fide of that action of the concerned authorities.

5. The opposite party No. 2 has filed a counter affidavit mentioning that an advance application sent by the Petitioner was considered and he was permitted to sit in the competitive examination for preparation of select list and when the Petitioner was selected at the top of the merit list of the sponsored candidate, he was intimated to take admission subject to study leave granted by the department. Petitioner had applied for and undertook to produce such leave of the competent authority and accordingly he was admitted to the Course subject to production of the permission of the competent authority within the time stipulated. It is further stated in that counter that inspite of grant of time when Petitioner failed to obtain the requisite permission his admission was cancelled but on receipt of the orders passed by this Court on 8.9.1997 and subsequent dates Petitioner was allowed to continue in the course. Petitioner was allowed to continue in course and therefore he was permitted to appear in the Semester examinations but the result has been withheld. It is further stated in that counter affidavit that the course was for three years and it was to complete on 25.3.2000 and in the absence of no objection and of study leave it will be highly illegal to entertain the studentship of the Petitioner with consequential consequences relating to his studies.

6. Narration of the fact and events as noted above indicate that Petitioner proceeded in a systematic and schemed manner so as to compel the authorities to grant him study leave or else to draw sympathy from the Court to get the in-

service training completed. Few circumstances and the conduct of the Petitioner in that respect is sufficient to justify the above observation of this Court viz.

(i) Petitioner while applying to the authority for grant of permission and study leave also forwarded an advance copy to the opposite party No. 2. The reason and necessity for sending such advance copy is not stated or explained by the Petitioner. Sending of advance copy is not adopted in usual course and it must be backed by sufficient circumstance. Counter affidavit of opposite party No. 2 indicates that such advance copy of the application was entertained to allow Petitioner's participation in the selection process;

(ii) In the counter of opposite party Nos. 1 and 3 it has been stated that Petitioner being in serial No. 28 in the gradation list, the UGIE was to recommend the case of senior persons in that grade. Therefore, it appears probable from that circumstance that to avoid deprivation in participation in the process of selection in-service candidates Petitioner sent an advance copy of his application to opposite party No. 2;

(iii) Petitioner took admission without obtaining prior permission of the authority under whom he serves. The matter relating to grant of study leave in the case at hand, was dependant on the order of the authorities (O. Ps. 1 and 3) in granting permission to undertake higher studies. Therefore, the act and omission on the part of the Petitioner in taking admission without the requisite order from the competent authority became a misconduct of insubordination and that to lead the circumstance to such a situation that either the authority was to grant the permission and study leave or else the Petitioner to approach the Court putting on the forefront his meritorious performance in the selection process;

(iv) Petitioner filed O.A. No. 1784 of 1997 and that was disposed by only the Member (Admn.) on 21.8.1997 and that to without issuing notice or mentioning that the Government counsel was heard. In that order an innocuous direction was given for disposal of the application of the Petitioner for study leave within a period of one week. As indicated earlier in this judgment, Petitioner has stated nothing if he served copy of that order on opposite party members 1 or 3 and if so on which date. Notwithstanding that on 26.8.1997 Petitioner took admission giving an undertaking before the opposite party No. 2 that he would produce the permission and study leave within ten days (See Annexure-A). Petitioner has not stated that he has initiated any proceeding for contempt of Court against opposite party Nos. 1 or 3 or both for non-compliance of order of the Administrative Tribunal. But taking advantage of his meritorious performance in the selection process (entrance examination as in-service candidate), putting that in forefront and alleging unreasonableness in the act of opposite party Nos. 1 and 3 Petitioner perused and obtained interim relief of stay against his cancellation of admission. As it appears from Annexure-A Petitioner's admission was cancelled as per order of the Registrar passed on 6.10.1997 but without bringing that to the notice of this Court Petitioner obtained order of continuance of the interim order of stay from date to date till 15.1.1998. It appears from the

counter affidavit of opposite party No. 2 that Petitioner was allowed to continue in the course because of stay order passed by this Court.

7. According to the procedure an in-service candidate is to apply through the competent authority to take admission only after grant of permission and sanction of study leave. Therefore, Petitioner should not have taken admission nor should have given an undertaking without the leave of the authority. Apart from that, the whole purpose of filling this writ application is to continue in the course and to pursue the matter relating to grant of study leave. Such a study leave has been refused to him was not brought on record on 4.9.1997 when the writ application was presented or on 8.9.1997. On the other hand, the order of the Government was passed on 5.9.1997 and the Director of Technical Education and Training, Orissa, signed the same on 5.9.1997, also a copy was communicated. When that was the position it was not fair on the part of the Petitioner to keep the Court in dark about that order and to obtain order for not to de-admit him from the Institute. Therefore, continuing in the course by the Petitioner as stated by the opposite party No. 2, is only by obtaining interim orders of stay from this Court. As noted above the same was done by the Petitioner by applying tricks and suppressing the truth. Thus, "equity" does not stay in favour of the Petitioner so as to pass an order directing the opposite parties 1 and 3 to grant study leave to the Petitioner. By the aforesaid observations, this Court does not mean to say that the competent authority should not reconsider the matter or the Petitioner should not ventilate his grievance as against that before appropriate forum. As stated by the Petitioner in paragraph 3(b) at page 6 "Since, the learned Tribunal has no jurisdiction to pass any order in relation to take admission into the aforesaid course, the Petitioner prefers this writ application before this Hon"ble Court for immediate interference." Since the Petitioner has already completed the course, validity of the same depends on the consideration of the authorities either to post facto grant of study leave or otherwise.

8. Petitioner's contention is that his case is bound to be considered because he was meritorious is without any merit inasmuch as less meritorious senior teaches if otherwise were eligible were to be referred in accordance with the service Rules. For example, a teacher having put in a service of 20 years is meritorious but not as meritorious as a candidate who has completed five years of service. The study leave for higher qualification also involves incentives and promotion and of placing in a higher scale of pay. The senior teacher, though less meritorious, if eligible to undergo in service higher study, then he has to be preferred than the most meritorious junior most person in the cadre. Apart from that, in the absence of any illegality, perversity, absurdity or mala fides in the order of the competent authority in deciding who should be granted with study leave, the writ Court should not interfere with such an order. Apart from that, when the Petitioner is a Government servant and is aggrieved by the order relating to grant or refusal of study leave and permission, it is the appropriate authority before whom the Petitioner can appeal or in the alternative he should

approach the State Administrative Tribunal for appropriate remedy. Fact remains that the course was completed in the year 2000. Therefore, pendency of the writ application in this Court cannot be regarded as a ground to take a different view.

9. From the foregoing narration of facts and circumstances and the aforesaid discussion this Court directs that no consequential action shall be taken by opposite party No. 2 as against the Petitioner for a period of two months within which if so legally advised, Petitioner may seek for review of the order of the opposite parties 1 and 3 or he may prefer an appeal before the competent authority, if so provided or may seek the indulgence of the State Administrative Tribunal in the matter relating to grant of permission and study leave. It is needless to say that consequence of the course undertaken shall be dependant on the decision by the concerned authorities relating to grant of study leave or otherwise. However, if the Petitioner shall give an undertaking to not to claim any service benefit and advantage against his seniors in the grade or to claim any out of turn benefit on that account then such undertaking be properly and equitably considered by the concerned authorities. If the Petitioner shall seek for review of the study leave by the opposite parties 1 and 3 and that to within the above stipulated time then the opposite parties 1 and 3 are to dispose of such application within a period of two weeks from the date of filing such review application.

10. The writ application is accordingly disposed of.