

(2012) 01 DEL CK 0051

In the Delhi High Court

Case No : Writ Petition (C) No. 5163 of 2010

Twinkle Wadhwa

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 30-01-2012

Acts Referred:

Citation : (2012) 2 AD 469 : (2012) 187 DLT 204 : (2012) 2 SLJ 176

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : M.R. Shamshad and Mr. A.S. Azhad, for the Appellant; Mohinder J.S. Rupal, for Respondent No. 1/University of Delhi, for the Respondent

Judgement

A.K. Sikri, Acting Chief Justice

1. The petitioner herein is a Judicial Officer in Delhi Judicial Service. After successfully undergoing the selection process, she was appointed as Judicial Officer. At that time, she was pursuing her course in Masters of Law (L.L.M). She successfully completed the said course in the year 2009. With a desire to pursue higher education, she applied to the respondent University of Delhi for being enrolled for the Ph.D. Degree Programme on 27th July, 2009. For pursuing this Ph.D course, she had applied to her employer viz High Court of Delhi for permission to pursue the said course. This permission was duly granted to her by the High Court on 19th September, 2009 wherein it was mentioned that the permission was subject to the condition that "joining of course by her should not affect her disposal and maintaining of official punctuality" and "course timing should not overlap normal court working hours" and no study leave would be granted to her except the leave for actual date of examination.

2. It would be pertinent to mention at this stage that just before the petitioner had applied for enrollment for the Ph. D. Degree Programme, on 1st June, 2009, the University Grants Commission issued UGC (Minimum Standards and procedure for Awards of M.Phil/Ph.D. Degree), Regulation, 2009 (hereinafter

referred to as the UGC Regulation, 2009). Regulation 13 thereof reads as under:-

13. After having been admitted, each M.Phil/Ph. D student shall be required by the Universities, Institutions, Deemed to be Universities and Colleges/Institutions of National Importance, as the case may be, to undertake course work for a minimum period of one semester. The course work shall be treated as pre M.Phil/Ph. D preparation and must include a course on research methodology which may include quantitative methods and Computer Applications. It may also involve reviewing of published research in the relevant field. The individual Universities, Institutions, Deemed to be Universities and College/Institutions of National Importance, as the case may be, shall decide the minimum qualifying requirement for allowing a student to proceed further with the writing of the dissertation.

If found necessary, course work may be carried out by doctoral candidates in sister Department/Institutes either within or outside the University for which due credit will be given to them.

Pursuant thereto, the Delhi University issued Ordinance VI-B incorporating clause 4D and E which read as under:-

4D. University/College Teachers holding a permanent, temporary or ad-hoc positions having completed two years of service as Teacher in a Department/Constituent Colleges of the University of Delhi.

4E. Candidates sponsored by their employers shall be considered only if they get study leave for a period of two years to fulfill residency requirement of the University of Delhi.

3. In the application made for enrollment to the doctoral degree, the petitioner had proposed her topic of research as "Validity of Pre-Nuptial Contracts-A Comparative Study". It would be worthwhile to mention that at that time the petitioner as Judicial Officer was discharging her duties of MM/Mahila Court. In that capacity, she was dealing with matrimonial and women related issues. According to her, while dealing with these cases, she thought of the aforesaid topic for the purpose of doctoral research as she was gaining practical experience while dealing with such cases on day to day basis.

4. As is clear from clause 4D and E of Ordinance VI-B that if a candidate for enrolment of Ph.D. Programme happens to be a teacher in the University or College, whether in permanent, temporary or ad-hoc capacity, the requirement for her/him is two years of service as teacher. On the other hand, if the said candidate is employed somewhere else (like the petitioner), the candidature is to be considered only if such a candidate is able to get study leave for a period of two years to fulfill residency requirement of the University of Delhi. The petitioner, alongwith her application for enrollment, submitted an application for waiver of the aforesaid condition of study leave though according to her this condition did not apply in her case.

5. Sometime in August-September, 2009, the petitioner was called by the respondent for interview for enrollment in Ph. D. Course. She appeared before the Interview Panel. However, she was not informed about her admission. After waiting for quite some time, when she moved the application under the Right to Information Act in July, 2010 seeking information, the respondent in their reply relied upon the aforesaid clause 4E implying that the petitioner was refused admission on the ground that since she was not in a position to take study leave for a period of two years, to fulfill residency requirement, she could not be enrolled.

6. At this juncture, the petitioner approached this Court by way of the present petition. It is the case of the petitioner that Clause 4E of the Ordinance is irrational, arbitrary and discriminatory in nature, where, on the one hand, the University/College teachers are made eligible for enrolment to this course without having leave requirement and merely on the basis that they have completed two years of service as teacher. On the other hand, all the applicants in the employment other than in teaching of Delhi University are mandatorily appointed as sponsoring candidate despite the fact that the petitioner is not a "sponsored candidate". It is also submitted that keeping in view the nature of duties of the petitioner as Judicial Officer and the proposed topic of her research, she should be treated at par with the teachers and the rational applied for the teachers exempting them from taking two years of leave squarely and fully applies to the petitioner as well. Her submission in this behalf is that the judicial duties performed by her would rather facilitate the research and while performing the duties as Judicial Officer, she would be in a better position to collect the requisite data for the purpose of comparative study rather than when she is on study leave.

7. It is submitted that the petitioner has been very deeply interested in academics and has inclination to pursue higher studies in order to enhance her knowledge base and expertise on the subject of research. It is further submitted that the petitioner has been dealing with the issues related to her topic of research in her official capacity. The research in the field of proposed topic will enhance the capability of the petitioner to deal with those issues in better way while continuing to be in her official position. The requirement if any, for taking leave of any period, in the present case for two years, should not apply to research based education specially to a category of candidate in the present case. Most of the Ph. D. students while continuing their similar research work are given a faculty position in various Universities including the respondent as per clause 4D. The petitioner is discharging a similar functions which is very closely related to her topic of research and in this background, disqualifying the petitioner on the ground of holding a position in the related field would be extremely unreasonable and contrary of the objects and purpose of the research based education. The petitioner also submits that Ordinance VI-B framed by University of Delhi, is arbitrary and vitiated from unequal treatment.

8. The Delhi University has filed its counter affidavit contesting the aforesaid prayer of the petitioner. It is submitted that the petitioner admittedly has not been granted study leave as is clear from the communication dated 19th September, 2009 sent by the Registrar General, High Court of Delhi to the District Judge and Sessions Judge, Delhi. The said letter also stipulates that the course timing should not overlap the normal working hours of the Court which are 10.00 A.M. to 5.00 P.M., six days a week. Therefore, there is no time for the petitioner to pursue her Ph.D. programme. Referring to clause 4E of Ordinance VI-B, it is submitted that the purport of the said regulation is to treat Ph.D. programme as regular course of study. As the petitioner would not be in a position to do that, she cannot be granted admission to this course. The respondent university has also referred to clause 5 of UGC Regulation, 2009 which provide that Ph.D. Programme cannot be through distant mode and a-fortiori the same has to be through regular course of study which the petitioner cannot undertake due to her official commitments. It is stressed that since Ph. D student required to undertake requisite residency period of two years which the petitioner cannot fulfill, therefore she is not entitled to admission. The respondent has denied that the petitioner can do research in the field of proposed topic while continuing to work in her official position as she is required to have adequate interaction with her supervisor and guide on regular basis which the petitioner would not be in a position to do. It is also emphasized that the aforesaid clause 4E is not discriminatory or violative of Article 14 of the Constitution.

9. The University Grants Commission/Respondent no.2 has also filed the counter affidavit. Apart from stating its role in the field of education as per the provisions of the University Grants Commission Act, 1956, the UGC has traced the event which led to the framing of UGC Regulation, 2009. Reference is made to Regulation 5 and Regulation 13 on the basis of which it is maintained that the Ph. D. is full time programme for which students need to devote himself/herself for obtaining such degree. It is the view of the UGC that in order to maintain the standard of research degrees, a degree of Ph.D. cannot be termed as part time.

10. We have heard the learned counsel for the parties who made their submissions on the lines on which they have taken their respective stands in the petition and counter affidavits.

11. At the outset, we may observe that there is no denying of the fact that UGC Act whereby UGC is created/established was enacted with a view to coordinate and determine the standards in institution for higher education.

12. In *Osmania University Teachers' Association Vs. State of Andhra Pradesh and Another*, , the Apex Court held that:-

Entry 66 of List-I gave power to the Union to see that the required standard of higher education in the country was maintained. It was the exclusive responsibility of the Central Govt. to coordinate and determine the standards of

higher education. That power included that power to evaluate, harmonize and secure proper relationship to any project of national importance. Such coordinate action in higher education with proper standards was of paramount importance to national progress. Parliament had exclusive power to legislate with regard to the matters included in List-I and the State had no power at all in regard to such matters. If the State legislated on a subject falling within list-I, the State legislation was void.

The Court went on to say:

The Constitution of India vests Parliament with exclusive authority in regard to coordination and determination of standards in institutions for higher education. The Parliament has enacted the U.G.C. Act for that purpose. The University Grants Commission has, therefore, a greater role to play in shaping the academic life of the country. It shall not falter on fail in its duty to maintain a high standard in the Universities. Democracy depends for its very life on high standards of general, vocational and professional education, Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs. It is hoped that University Grants Commission will duly discharge its responsibility to the national and play in increasing role to bring about the needed transformation in the academic life of the Universities.

13. This rule of UGC was reemphasized in *University of Delhi Vs. Raj Singh and others*, where the Court held that:-

The University Grants Commission Act is enacted under the provisions of Entry 66 to carry out the objectives thereof. Its short title, in fact, reproduces the words of Entry 66. The principal function of the University Grants Commission is set out in the opening words of Section 12, thus, "it shall be the genera duty of the Commission to take...all such steps as it may think fit for the promotions and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities...

It is very important to note that a duty is cast upon the Commission to take "all such steps as it may think fit... for the determination and maintenance of standards of teaching" these are very wide ranging powers.

14. It is also to be accepted that University Grants Commission issued UGC (Minimum Standards and procedure for Awards of M.Phil/Ph.D. Degree), Regulation, 2009 are statutory in nature having been framed in exercise of powers conferred u/s 26 of the UGC Act in due discharge of its duties to maintain higher standard of education. These are binding on all the Universities and Colleges affiliated thereto. It is also to be expected that UGC being expert body knows its job better than others as how to maintain higher standard in university education and when in the process the aforesaid Regulations were framed, that too after detailed studies based on the opinion of the experts, the Court should be loath to interfere with the same. In the wisdom of UGC a Ph.D. course is to be treated as regular and not a distant education, the same has valid rational.

15. So far so good. Having noted this, it would be necessary to examine the underlying rationale behind the clauses 4D and 4E of the Ordinance -VI B while deciding the fate of this present petition. Clause 4D does not cast any obligation on University/College teachers to take study leave for undertaking Ph.D course. Reason is obvious. In the case of a teacher, there is a valid presumption that such a teacher while teaching would be in a better position to undertake Ph. D course. After all, it becomes necessary for a candidate who is to do doctoral research, to take leave, if in other employment, as otherwise it will be difficult to bring him/her to the University environment in which a teacher is already there. In his/her capacity as a teacher, the teaching assignment itself would facilitate the process of doctoral pursuits. He/she would be in a position to take guidance from other senior teacher as well as his/her guide/supervisor who would normally be a senior teacher. Some Ph.D students are also required to teach in fellowship.

16. Once we accept the aforesaid rationale as per which there is no such requirement of taking study leave for a person who is a teacher, we find that this rationale is equally applicable to a person like the petitioner here. Though, she may not be a teacher. She has chosen the subject which relates to the judiciary. Her proposed topic of research is empirical and not doctrinaire in nature. For empirical study she needs to go to a place from where she would be in a better position to collect the data. Pertinently, for this research topic that place is the Court itself and not the class room of law faculty/law college. It is from real case studies of various kinds of litigation in this field coming to the court that she would be collecting the necessary material.

17. What any other candidate with this topic in some other employment would have done after taking study leave to undertake this research programme? Obviously, her supervisor would have guided her to the Courts and study the case files of live and decided cases and even see the live proceedings in the Court room. In such a situation, she could have prepared the required questionnaire and interviewed stake holders including Judges, Court staff and the litigants. The petitioner in the present scenario, when she herself is a Judicial Officer, is not required to go anywhere else. She is already sitting at the required place namely Court environment which is necessary for her to undertake this research programme. She herself was gaining experience while discharging her duties being Mahila Court. She had the exposure to the litigants, rather better exposure while dealing with them day in and day out in series of cases. She has better contact with her colleagues discharging similar duties to gain from their experience. The purpose which is sought to be served with two years leave is in fact achieved by the person like the petitioner while in service. Her job profile, in fact, becomes facilitator for Ph.D. course. Therefore, when the choice of subjects is intrinsically connected to the job of a Judicial Officer, applying the aforesaid rule in a mechanical manner would rather be a retrograde step.

18. It would be useful to refer to the judgment of this Court in Union of India

(UOI) and Ors. Vs. P.R. Chandra and Ors. (W.P. (C) 1762 and 1824/2008 decided on 3.12.2010) wherein a Division Bench of this Court referring to certain judgment of the Supreme Court called for the application of situationalist approach. We would like to quote the following passage from the said order:-

In the decision reported as The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, , in para 23 it was observed; " But if it becomes impractical to act upon (?The rule) it is no use insisting that the authorities must continue to give effect to it. There is no sense in asking the performance of something which has become impossible. Of course, the Government, before departing from the rule, must make every effort to respect, and only when it ceases to be feasible to enforce it, that it has to be ignored?. In the decision reported as S.B. Patwardhan and Another Vs. State of Maharashtra and Others, , in para 51 the Court observed that Judges should not be unmindful of administrative difficulties faced by the executives and as long as there is fairness in action, executive decisions must be respected. We may only add that the decisions of the Courts where quota rota rule have broken down are best illustration of how Courts have accepted the practical reality of life and have ignored strict compliance with the letter of the law. Indeed, no Judge can put himself in a straitjacket, much less apply known and existing formula to remedy all ills. If the demand of a situation is to be rationalist, the Judge must wear the robes of a rationalist and where a situation demand, the Judge has to wear the robes of a situationalist Judge.

19. The Apex Court in Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another, made the following observations:-

76. In Principles of Statutory Interpretation by Justice G.P. Singh (12 Edn. 2010), the learned Author has stated as under:

In selecting out of different interpretations "the court will adopt that which is just, reasonable and sensible rather than that which is none of those things"...A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results. (pp. 131-132).

x x x

79.A reasonable construction agreeable to justice and reason is to be preferred to an irrational construction. The Court has to prefer a more reasonable and just interpretation for the reason that there is always a presumption against the law maker intending injustice and unreasonability/irrationality, as opposed to a literal one and which does not fit in with the scheme of the Act. In case the natural meaning leads to mischievous consequences, it must be avoided by accepting the alternative construction. (Vide: Bihar State Council of Ayurvedic and Unani Medicine Vs. State of Bihar and Others, ; and National Aviation Company of India Ltd. Vs. S.M.K. Khan,).

x x x

80. The Court has not only to take a pragmatic view while interpreting a statutory provision, but must also consider the practical aspect of it. (Vide: Union of India (UOI) Vs. Ranbaxy Laboratories Ltd. and Others,).

20. In Ramesh Mehta Vs. Sanwal Chand Singhvi and Others, the Apex Court held as under:-

A definition is not to be read in isolation. It must be read in the context of the phrase which would define it. It should not be vague or ambiguous. The definition of words must be given a meaningful application; where the context makes the definition given in the interpretation clause inapplicable, the same meaning cannot be assigned.

21. No doubt, such research scholars are supposed to be in constant touch with their supervisors and the faculty of law/university expects them to report to their respective Supervisors atleast thrice a week. However, there are examples where topic and research relates to judiciary, and Judges of superior judiciary are named as Supervisors alongwith some professor of the University having regard to the Ordinance position. The Judicial Officer can be in constant touch with such a Judge Supervisor. She can also meet this requirement by even contacting her Professor Supervisor as there is no requirement that the research scholar is to contact the supervisor only during the working hours. Apart from study leave, other conditions imposed by the High Court in letter dated 19th September, 2009 granting permission for joining the course can always be taken care of by the High Court.

22. While we are of the opinion that in normal cases clause 4E or Ordinance VI-B serves solitary purpose, in exceptional cases like that of the petitioner, it would not be appropriate to strictly treat her as "sponsored candidate". We may also refer to the clause 10 of Ordinance VI-B which reads as under:

Students who are provisionally registered for the Degree of Doctorate of Philosophy (Ph.D.) will be required to take a minimum of two courses and upto a maximum of eight courses as per the decision of the Departmental Research Committee. Each course will be of three hours instructions/studies per week. The course work should be completed in a period of two semesters not exceeding one academic year from the date of the provisional registration. Doctoral students may be permitted to take courses in related and allied subjects being offered by other Departments of the University. The students shall be evaluated at the end of each semester. If a student is not able to pass a course with 50% marks, the student shall be allowed to reappear in the examination within 12 months.

The provisional admission in the Ph.D programme will be confirmed by the Departmental Research Committee and the Board of Research Studies only after the successful completion of course work and completion of other formalities like defence of the thesis topic in a departmental seminar.

The petitioner has submitted that for regular course study, each course is to be of three hours instructions in a week and hence the three hours instructions based studies would not require a prospective student to mandatorily undergo two years leave.

23. We are of the opinion that solution to the issues raised can be found by resorting to ordinance X-C which reads as under:-

Permissive Provisions

The Academic Council may, in exceptional cases grant exemption from the operation of any of the Ordinances governing admission of students, migration, the courses to be pursued by them, attendance at lectures or sessional or other work or the examination of candidates and authorize what is proper to be done instead in such cases, provided that no such exemption and authority shall be deemed to have been granted unless not less than two-thirds of the members present of the Academic Council voted in favour of the motion for such exemption and authority made by, or with the written authority of the Vice-Chancellor; and Provided further that this two-thirds majority voting for the exemption should not be less than half the total strength of the Academic Council at the time.

24. Thus, an Academic Council/Executive Council has the power to relax the aforesaid provision when we find that it is a fit case to exercise such power, we commend the Academic Council to take appropriate decision for this purpose. The Faculty of Law shall forward the case of the petitioner to be placed before the Academic Council which would take the decision on the request of the petitioner for waiver under the aforesaid Clause within two months from today.

25. We accordingly dispose of this writ petition in the aforesaid terms.