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WP-21103-2022

IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

ON THE 25<sup>th</sup> OF FEBRUARY, 2026WRIT PETITION No. 21103 of 2022*ANIL KUMAR SHARMA**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Prashant Singh Kaurav - Advocate for the petitioner.

Shri Sohit Mishra- GA for the respondents/State.

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ORDER

Petitioner has filed this writ petition challenging the order dated 31/8/2022 (Annexure P/1), whereby, the NOC granted to him earlier for pursuing Ph.D. course, has been cancelled. He has also prayed for a direction to respondents to extend him the benefit of study leave as per Circular dated 7/10/2015 and as per M.P. Civil Services (Leave) Rules, 1977.

2. Petitioner is possessed of B.E. (Electricals), M.Tech. (Electricals) qualifications. He was initially appointed on the post of Lecturer (Electricals) on 8/10/2010 in Govt. Polytechnic College, Nowgong, Chattarpur. The appointment was on contract for a period of three years. On completion of three years, he was regularized in service w.e.f. 2/11/2013 vide order dated 25/4/2015.

3. In order to pursue Ph.D. course, petitioner applied for permission



from the Principal of the College on 31/3/2022. The Principal accorded permission vide letter dated 27/4/2022. The permission was however subject to Clause 3,3(1),3(2) of Circular dated 7/10/2015 and the M.P. Civil Services (Leave) Rules, 1977 (for short "Rules of 1977"). The petitioner contends that, based upon NOC given by Principal of Nowgong College, he joined the Ph.D. course and started pursuing the same in Tagore University, Raisen.

4. Petitioner was then sent on deputation on 20/05/2022 to Govt. Polytechnic College, Datia. This was done pursuant to the instructions issued by the Directorate of Technical Education and Skill Development Department. Petitioner accordingly joined in the College at Datia and is presently posted there. The Principal of the College at Nowgong wrote to the Principal of College at Datia on 16/6/2022 expressing his no objection, if the petitioner is permitted to pursue his Ph.D. Course. This was done in view of the fact that permitting the petitioner to pursue course may effect the teaching work of the College at Datia.

5. Principal of the College, thereafter issued the impugned communication dated 31/8/2022 (Annexure P/1), whereby, the permission granted by him earlier has been cancelled. This has been done in view of certain instructions issued by the Directorate vide Circular dated 4/8/2022. Challenging this communication, petitioner has filed this writ petition praying for aforementioned reliefs.

6. Challenging the impugned action of the respondents, learned counsel for the petitioner argued that cancellation of NOC based upon the



circular issued subsequently is illegal inasmuch as the Circular issued on 4/8/2022 would not have the retrospective effect. It is his submission that no reason has been assigned to reject the NOC to the petitioner and further that since the petitioner is now not working in the College at Nowgong, petitioner's going on study leave would not adversely effect the work at Nowgong. He further submitted that Circular dated 7/10/2015 provides for engaging guest faculty in case any permanent faculty has gone on study leave. Learned counsel further submitted that the impugned communication has been issued by the respondent no.6 without any logic and by misinterpreting the circular dated 4/8/2022.

7. Learned counsel for the petitioner further submitted that Ph.D. course would be beneficial for the petitioner for his career advancement inasmuch as Ph.D. is one of the qualification for further promotion. He submitted that as per Rule 42 of the Leave Rules, 1977, he is eligible and entitled for study leave for which the NOC was already issued by respondent no.6 in his favour. He further submitted that acting upon the NOC, the petitioner has taken admission to pursue Ph.D. course and has also deposited fees for the same. Therefore, cancellation of NOC is not permissible. It is his further submission that since petitioner is presently working in College at Datia, respondent no.6 was not having jurisdiction to cancel the NOC. With the aforesaid submission, learned counsel for the petitioner prayed for setting aside of the impugned communication and for restoring the permission to pursue his Ph.D. course.

8. On the other hand, learned counsel for the State refuted the



submissions made by petitioner's counsel. It is his submission that the study leave is governed by Chapter VI of Leave Rules, 1977 and so long as the leave is not sanctioned, the petitioner was not supposed to join any course. It is his further submission that merely grant of NOC by respondent no.6 does not confer any right to avail study leave on the petitioner inasmuch as the leave was to be sanctioned by the Directorate of the Department and not by respondent no.6. Learned counsel also submitted that since the study leave was not sanctioned to the petitioner, the provisions of Circular dated 4/8/2022 were very much applicable in his case also and as per the said circular, the preference is to be given to those candidates who wish to pursue their Master's degree. It is his further submission that other candidates who wish to pursue Master's degree have been granted study leave, and therefore, the petitioner cannot ask for study leave as of right. Learned counsel for the State thus prayed for dismissal of the petition.

9. Considered the arguments and perused the record.

10. Facts which are not in dispute are that the petitioner while working as Lecturer in the College at Nowgong applied for permission to pursue his Ph.D. course. The permission was granted by respondent no.6, however, the same was subject to fulfilment of Clause Clause 3, 3(1), 3(2) of Circular dated 7/10/2015 as also the provisions of Leave Rules, 1977. Thus, the permission was not final and the petitioner was required to get the study leave sanctioned. Thereafter, the petitioner was sent on deputation to College at Datia on 20/5/2022. The petitioner alleges that based upon the NOC given by respondent no.6, he proceeded to pursue his Ph.D. court. However, from



the records, it is not clear as to when he joined the course. However, as alleged by petitioner, as on date, he is pursuing Ph.D. Course. It is also a fact that except NOC given by respondent no.6, no study leave is sanctioned to the petitioner.

11. Grant of leave to a Govt. servant is governed by the provisions of Leave Rules, 1977. As was held by this Court in AIR 1960 MP 252, grant of leave, including study leave, is not a right of any employee or the Govt. servant. It is the privilege to be extended to the employee depending upon the facts and circumstances of the case and it cannot be claimed by any employee as a matter of right.

12. Rule 6 of the aforesaid Rules provides that leave cannot be claimed as of right. Further, Rule 42 provides for conditions for grant of study leave, which reads as under:-

*"42. Conditions for grant of study leave. (1) Subject to the conditions specified in these rules, study leave may be granted to a Government servant with due regard to the exigencies of public service to enable him to undergo, in or out of India, a special course of study consisting of higher studies or specialised training in a professional or a technical subject having a direct and close connection with the sphere of his duty.*

*(2) Study leave may also be granted :-*

*(i) for a course of training or study tour in which a Government servant may not attend a regular academic or semi-academic course if the course of training or the study tour is certified to be of definite advantage to Government from the point of view of public interest and is relate to the sphere of duties of Government servant; and*

*(ii) for the purpose of study connected with the framework or*



*background of public administration, subject to the conditions that-*

*(a) the particular study or study tour should be approved by the authority competent to sanction study leave; and*

*(b) the Government servant should be required to submit on his return, a full report of the work done by him while on study leave.*

*(iii) for the studies which may not be closely or directly connected with the work of the Government servant, but which are capable of widening his mind in a manner likely to improve his abilities as a civil servant and to equip him better to collaborate with those employed in other branches of the public service.*

*(3) Study leave shall not be granted unless*

*(i) it is certified by the Administrative Department that the proposed course of study or training shall be of definite advantage from the point of view of public interest;*

*(ii) it is for prosecution of studies in subjects other than academic or literary subjects; and*

*(iii) the Economic Affairs Department of the Government of India, Ministry of Finance agree to the release of foreign exchange involved in the grant of study leave, if such leave is out of India*

*(4) [Study leave shall not ordinarily be granted to a Government servant-*

*(i) who has not been registered in Government service,*

*(ii) who has rendered less than 5 years service under Government; including service in ad hoc capacity,*

*(iii) who is due to retire or has the option to retire from the Government service within three years on the date on which he is expected to return to duty after the expiry of the leave].*

*(5) Study leave shall not be granted to Government servant with such frequency as to remove him from contact with his regular work or to cause cadre difficulties owing to the absence on leave."*

13. When the provisions of Rule 42 are X-rayed, following position



emerges:

i. sub-section (1) of Section 42 provides that study leave may be granted to a Govt. servant with due regard to exigency of public service;

ii. sub-section (2)(i) of Section 42 provides that study leave may be granted to a Govt. servant for a course of training or study tour which is certified to be definite advantage to Govt. from point of view of public interest;

iii. sub-section (3)(i) of Section 42 prohibits grant of study leave to a Govt. servant unless the proposed course of study or training is certified by Administrative department to be definite advantage to Govt. from point of view of public interest.

From reading aforesaid provisions of Rule 42, it comes out loud and clear that the purpose of proposed course of study or training should be in the interest of Govt. from point of view of public interest. Meaning thereby, the career advancement of Govt. servant is not the paramount consideration.

14. Further Rule 43 provides that the study leave can be granted to a Govt. servant by Administrative Department. For purposes of petitioner, the Administrative department is the Directorate of Technical Education and Skill Development Department who was competent to sanction study leave.

15. The Directorate of Technical Education and Skill Development Department issued an order dated 7/10/2015 (Annexure P/5) providing for guidelines for purposes of grant of study leave. The petitioner has also placed reliance upon the guidelines. Clause 3F (ii)(2) of the said circular reads



under:-

*"2. उच्च अध्ययन अवकाश हेतु शैक्षणिक सत्र के प्रारंभ में शिक्षक उच्च अध्ययन हेतु चयन के समर्थन में दस्तावेज सहित अपना आवेदन संबंधित संस्था के प्राचार्य के माध्यम से संचालक तकनीकी शिक्षा, मध्यप्रदेश को प्रस्तुत करेंगे। संचालक तकनीकी शिक्षा, मध्यप्रदेश की अनुशंसा के आधार पर शासन द्वारा अध्ययन अवकाश हेतु स्वीकृति जारी किये जाने पर विचार किया जायेगा। जिन शिक्षकों की पदोन्नति / उच्च वेतनमान प्राप्त करने की अहर्ता उच्च अध्ययन प्राप्त न करने की वजह से बाधित हो रही है उनके अध्ययन अवकाश स्वीकृति प्रकरणों पर प्राथमिकता के आधार पर विचार किया जायेगा।"*

16. A perusal of the aforesaid clause shows that the application for leave of the petitioner was to travel through Principal of the College to Director of Technical Education and Skill Development Department. The Director was then required to make his recommendation based on which, the State Govt. could have sanctioned study leave to the petitioner. In view of the aforesaid clause, the Principal of the College was therefore, not competent to sanction the study leave. He has therefore, only granted his NOC which could only mean that the petitioner can be spared from the College. The NOC by him was thus, only the first step towards processing of the application for study leave. No right accrued in favour of petitioner to proceed for pursuing his course on the basis of NOC granted by respondent no.6.

17. The submission of the petitioner's counsel that acting upon the aforesaid NOC granted by respondent no.6, the petitioner deposited the fees for the course and has taken admission for the same. This is found to be factually incorrect. The study fee receipt filed as Annexure P/9 shows that



the petitioner had deposited the fees on 30/3/2022, whereas, NOC was granted by respondent no.6 on 27/4/2022. Meaning thereby, the petitioner has already taken admission for Ph.D. course even prior to grant of NOC by respondent no. 6. It is, therefore, incorrect to say that the petitioner changed his position based upon NOC granted by respondent no.6.

18. Since, the NOC granted by respondent no. 6 was not a final order sanctioning study leave, the instructions issued by respondent no.1 on 4/8/2022 were very much applicable in the petitioner's case. This is also because the leave is not a right of a Govt. servant and so long as the leave is not sanctioned, the instructions issued by the competent authority before such sanction, are required to be adhered to. The Circular issued by respondent no.1 on 4/8/2022 gives preference to those who wish to pursue Ph.D. degree. The respondents have filed documents alongwith the return to show that other incumbents from the College at Nowgong as also from the College at Datia have applied for study leave to pursue their Master's degree. Therefore, as per the instructions issued by respondent no.1 on 4/8/2022, the other incumbents get preference over the petitioner.

19. The submission of petitioner that the Ph.D. course is necessary for his career advancement, is also not acceptable. As discussed above, Rule 42 provides for grant of study leave to a Govt. servant when such proposed study or training is beneficial for the Govt. from point of view of public interest. The interest of Govt. servant may be the secondary consideration. The respondent no.6 while granting NOC, nowhere opined that the Ph.D. course of petitioner is for the advantage of the Govt.



20. The Division Bench of Delhi High Court considered somewhat similar situation in the case of *Chaman Kumar vs. University of Delhi* reported in *2012 SCC Online Del. 4734*. It was also a case where the incumbent proceeded to pursue Ph.D. course based upon permission granted by Principal of the College. This was found to be beyond competence of Principal. The Division Bench held as under:

*"21. Though we must admit that the thought of letting the appellant complete his higher education and of this Court not coming in the way thereof has crossed our minds also but the logical side of our brain, for the following reasons, tells us to decide otherwise.*

*i. As the term 'study leave' denotes, it is a permission for absence from employment or duty or a authorized absence and thus cannot be claimed as a matter of right. Without permission or authorization there can be no study leave.*

*ii. Merely because an employee may be eligible for leave does not bind the employer to grant such leave. The employer, in taking decision on an application of leave is entitled to consider, not only the eligibility of the employee for leave but also other factors as to its own functioning and if does not find it convenient or practical or conducive to its own affairs to grant leave, is entitled to refuse the same. It is the prerogative of the employer to act according to the exigencies of the situation, keeping in view the best interest of administration. The paramount consideration in granting leave, for an educational institution, is not only the convenience of the teacher but the welfare of the students. The authority which is to sanction leave, can take into account all the relevant facts and either grant or refuse leave.*

*iii. The employer herein being amenable to writ jurisdiction, this Court, in exercise of powers of judicial review is only to see*



*whether refusal of the leave can be said to be arbitrary, discriminatory or malafide and is otherwise to not sit in appeal over the decision of the employer in this regard. It is after all the employer who has to manage its affairs and decide whether it is convenient or not to grant leave of absence and the Court cannot interfere therewith.*

*iv. Though it is respondent no. 2 College which had employed the appellant but it can not be lost sight of that the entire emoluments etc. of the appellant are borne by the University and not by the respondent no. 2 College. It cannot further be lost sight of that the respondent no. 2 College under the terms of its affiliation with the University is to function as per the Rules and Regulations of the University and in fact the performance of the duties by the appellant during the term of his employment albeit with the respondent no. 2 College is governed by the Rules and Regulation of the University. It yet further cannot be lost sight of that it was the University which had at its own cost and expense introduced the appellant to the foreign University.*

*v. The Faculty Training Programme under which the University at its own expense had sponsored Masters Course in a foreign University of the appellant and had during the duration thereof also continued to disburse the pay and allowance of the appellant, was for the benefit of the University and its students. Towards the said goal only it was a condition of the same that the appellant on completion of the Masters Course would return and serve the University/College i.e. teach its students for a continuous period of three years.*

*vi. Knowledge to be imbibed by the appellant in the said Faculty Training Programme was intended to be shared by the appellant with other faculty members and students in the next three years after return. The said knowledge, in today's fast paced world of knowledge explosion may well become otiose or redundant or obsolete in the further 42 months for which the appellant desires to*



*remain away, defeating the very purpose for which the University sponsored the appellant for the Masters Course. Not only so, the further qualifications of Ph.D. which the appellant now seeks to achieve for himself may not even leave the appellant suitable/fit to teach the students for whom he has been employed, upsetting the entire scheme of faculty/staff assessment of the University.*

*vii. Thus, objection by the University to the respondent no. 2 College granting study leave to the appellant, thereby letting the appellant off his obligation under the agreement with the University cannot be said to be arbitrary or whimsical or malafide. There is in any case no plea thereof.*

*viii. We also find merit in the contention of the University as to the conduct of the appellant. The appellant as far back as in October, 2011 i.e. much before applying for admission to Ph.D. Programme or joining the same was in no unclear terms told that he could not do so. The appellant inspite of the same surreptitiously obtained the study leave from the respondent no. 2 College in breach of his obligation under the agreement with the University.*

*ix. Considering the volume of staff and faculty of the University, consideration on sympathetic grounds in favour of one can have a cascading effect and cause discipline issues.*

*x. The respondent no. 2 College is also not claiming to be, independently of the University and in spite of the agreement of the appellant with the University being entitled to grant such study leave to the appellant and immediately on objection being taken by the University has cancelled the study leave of the appellant.*

*xi. The Ph.D. Course of the appellant is of 42 months duration. On the contrary the study leave granted by the respondent no. 2 College is of 12 months only. Moreover, the maximum study leave even under the Rules of the University can be of three years i.e. 36 months only and in which time Ph.D. Course would not be completed. For this reason also the claim of the appellant is misconceived.*



*xii. The respondent no. 2 College is already shown to have been forced to appoint another Assistant Professor against the leave vacancy of the appellant. The University will thus stand burdened with the emoluments of the said replacement also. Not only so it is found that replacement vacancies for such long duration themselves become a cause for further litigation.*

*xiii. It is even otherwise an established principle that this Court in exercise of powers of judicial review will not interfere unnecessarily with the functioning of the educational institutions. [Director (Studies) v. Vaibhav Singh Chauhan 2008 (14) SCALE 554 and recently reiterated in Sanchit Bansal v. The Joint Admission Board, (2012) 1 SCC 157]."*

Following Delhi High Court, the Chattisgarh High Court also dealt with the issue in similar manner in the case of *Ganesh Prasad Shukla vs. Guru Ghasidas Central University Bilaspur* reported in *2018 SCC Online 1050*. The Court held thus:

*"11. The petitioner is claiming the study leave as a matter of right relying upon record of minutes of meeting dated 17.12.2014 of the committee constituted by the Executive Council of the University and subsequently notified. It is neither a statute nor having force of law or ordinance or regulation. The University, in order to regulate the grant of study leave to the University officers/teachers, has devised its own internal mechanism, so that the application for study leave can be considered properly and be granted as the exigencies of service may require. But that internal mechanism devised by University will not create any legal and enforceable right in favour of any officer of university to claim that study leave as a matter of right.*

*12. Following the principles of laid down by the Delhi High Court in Chaman Kumar (supra), if the facts of the present case are*



*examined, it is quite vivid that though at present the total available strength of Assistant Professors in the said department is 7 and petitioner is claiming study leave on the basis of memo dated 17.12.2014 which was notified subsequently, but fact remains that out of total sanctioned strength of 18 faculty members only 7 members are presently working there, as Mr. Atul Kumar Sahu, Assistant Professor is already on study leave, which is less than 50% of the strength and that the Department of Industrial Production and Engineering of the University is running short of Assistant Professors. The petitioner may or may not be eligible for study leave as per memo dated 17.12.2014, but the fact remains that the University has to look into and has to act according to the exigencies of the situation and particularly the best interest of the students of the University, as the University has claimed shortage of faculty members in the said department, which is apparent on record also, and only for the convenience of the petitioner for advancement of his career or for better promotional prospect, cannot be a ground to grant study leave as the welfare and best interest of students is equally important and the name and reputation of the University is also equally important which rests on the availability of regular faculty members. In view of the above facts, grant of such a leave is only a privilege to be extended by the University to its officers. It cannot be claimed as a matter of right by the petitioner. I respectfully agree with the view expressed by the Delhi High Court in the matter of Chaman Kumar (supra) and view expressed by the High Court of M.P. in Horace Ross (supra) which is binding on this Court. It is for the University to manage his own affairs particularly to run the University which is a Central University constituted under the Central Universities Act, 2009 and the Court cannot sit as an Appellate Authority over the decision of the University particularly which has been taken by the School Board consisting of eminent Professor(s) and reputed Assistant Professor(s) of the*



*Central University on the basis of material available on record."*

21. I respectfully concur with the view expressed by Division Bench of Delhi High Court as also by the Single Bench of Chattisgarh High Court. It is held that the petitioner cannot claim study leave as of right and while dealing with his request, the Govt. was required to consider the interest of College as also the fact as to whether the proposed study is for advantage of Govt. or not. It is further held that the petitioner could not have proceeded to pursue the course based upon NOC granted by Principal of College without waiting for sanction of study leave by Govt. which is competent for the same. It is also held that, since the study leave is not a right, the instructions issued on 4/8/2022 i.e. after grant of NOC by respondent no.6, were applicable and based upon such instructions, cancellation of NOC by respondent no.6 is held to be legal and valid.

22. In view of the aforesaid, the cancellation of NOC by respondent no.6 based upon the instructions issued on 4/8/2022 is upheld. Thus, no interference can be made with the impugned communication dated 31/8/2022.

23. At last, the learned counsel for petitioner submitted that for pursuing Ph.D. the petitioner is not required to continuously attend the course and he was required to attend the course intermittently. The same could be adjusted against other leave available to the leave account of petitioner. The submission so made is considered. Since, there is no pleading to this effect in writ petition and consequently, no response in reply, the same cannot be adjudicated in this petition. Even otherwise, this issue needs to be addressed



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by the Govt. The petitioner is, therefore, at liberty to approach competent authority in this regard in accordance with law.

24. Petition fails and is hereby dismissed.

**(ASHISH SHROTI)**  
**JUDGE**

JPS/-