

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.58 of 2024

1. Tripura University, represented by its Registrar, having his office at Suryamaninagar, PO-Suryamaninagar, PS- Amtali, Agartala, District- West Tripura, Pin-799022
2. The Registrar, Tripura University, having his office at Suryamaninagar, PO-Suryamaninagar, PS- Amtali, Agartala, District- West Tripura, Pin-799022
3. The Vice-Chancellor, Tripura University, having his office at Suryamaninagar, PO- Suryamaninagar, PS- Amtali, Agartala, District- West Tripura, Pin-799022

.....Appellant(s);

Versus

1. Sri Anindya Sarkar, son of Late Asit Kumar Sarkar, resident of Joynagar, Lane No.5 PO- Agartala, PS- West Agartala, District- West Tripura, Pin-799001
2. University Grants Commission (UGC), represented by the Secretary, Bahadur Shah Zafar Marg, New Delhi-110002

.....Respondent(s).

For Appellant(s)	: Mr. Debalay Bhattacharya, Sr. Advocate, Mr. Soumyadeep Saha, Advocate.
For Respondent(s)	: Mr. P. Roy Barman, Sr. Advocate, Mr. Koomar Chakraborty, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Order

29/07/2024

Heard Mr. Debalay Bhattacharya, learned senior counsel assisted by Mr. Soumyadeep Saha, learned counsel for the appellants-University and Mr. P. Roy Barman, learned senior counsel assisted by Mr. Koomar Chakraborty, learned counsel for the writ petitioner/respondent herein.

2. The dispute is in a short canvas arising out of the impugned direction of the learned Writ Court which directed the University to accept the joining report of the petitioner and allow him to resume his normal duties and functions as Assistant Professor of the University upon completion of the eighteen months study leave with effect from 11.08.2022 till 08.02.2024 for

pursuing Ph.D Course. The refusal of the University vide letter dated 29.02.2024 was set aside. The University being aggrieved is in appeal before us.

3. The relevant facts as are necessary to appreciate the grounds of challenge are as under:

Petitioner, an Assistant Professor under the appellants-University, sought study leave for pursuing Ph.D Degree which was granted after a round of litigation before this Court vide office order dated 18.08.2022 for eighteen months from 11.08.2022 till 08.02.2024. Petitioner completed three semesters course work within this period successfully and submitted his joining report expressing his willingness to resume his duties from 09.02.2024. University initially allowed his joining and entrusted him duties to take classes, but vide impugned letter dated 29.02.2024 [Annexure-10 to the writ petition], the Registrar of the University informed him that his request could not be accepted as he failed to submit the proof of conclusion of work leading to the award of Ph.D Degree. From that date, he was not allowed to continue his normal duties and functions. His representation was also not responded to. The learned Writ Court considered the pleadings on record. The appellants-University took a stand on the basis of Clause (viii) of Regulation 8.2 of “UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018” (UGC Regulations, 2018, *for short*) and that a Ph.D scholar cannot substantially alter the course of study or the programme of research without prior permission of the Executive

Council/Syndicate. The learned Writ Court was of the considered view that when the course of study for Ph.D is fixed for three years initially, extendable up to six years, in that event to ask the petitioner to produce Ph.D Course completion certificate was unwarranted and contrary to the Regulations. Learned Writ Court further referred to Regulation 2(h) of Regulations, 2022 on the expression “course of study” which according to it meant the course of study prescribed by the School/Department/Centre to be undertaken by a student registered for the Ph.D Degree. Regulation 2(i) defined “Degree” which meant a degree awarded by a Higher Educational Institution in accordance with the provisions of Section 22(3) of the UGC Act, 1956. Regulation 2(s) of Regulations, 2022 defined “Programme”, which meant a higher education programme pursued for a degree specified by the Commission under sub-Section (3) of Section 22 of the UGC Act, 1956. On further consideration of Regulations 9, 10 & 11 of the UGC Regulations, 2022, the learned Writ Court was of the opinion that study leave for a period of eighteen months only was an exercise in absurdity as the entire Ph.D Course could not be completed within that period. Regulation 4 of the UGC Regulations, 2022 also provides a minimum duration of three years including course work and a maximum duration of six years from the date of admission to the Ph.D programme. Petitioner did not have an option not to resume his duties after expiry of eighteen months of study leave since he had to face penal action. Initially, the University allowed his prayer, but suddenly without any cogent reason refused his request as he had failed to submit proof of conclusion of the work leading to the award of the Ph.D Degree. Based on these findings, the learned Writ Court

directed the University to accept his joining report and allow him to resume his normal duties and functions as Assistant Professor of the University.

4. What happens to the unfinished Ph.D Course of the writ petitioner has however not been clarified or indicated in the impugned judgment.

5. It appears that the writ petitioner wants to pursue the remaining part of Ph.D Course while on duty as a Teacher in the University. The University has an objection to that on the ground that such a course change during the Ph.D programme would be permissible only with the permission of the Executive Council as petitioner would be pursuing the Ph.D Course on part-time basis instead of full time basis for which he was initially granted leave. This fact is sure that the University committed a mistake in granting only eighteen months leave though a minimum of three years leave was to be sanctioned as per Regulation 4 of 2022 Regulations which provides for duration of the programme. However learned senior counsel for the petitioner submits that petitioner does not want to change the mode of the course in the midst of the Ph.D programme.

6. On the part of the writ petitioner, the successful completion of the first part of the Ph.D programme has been evidenced through Grade Card-cum-Certificate issued by the Presidency University, West Bengal [Page-34 & 35 to the memo of appeal]. Communications of the Assistant Professor, Department of Sociology, Presidency University at Page-37 to 39 to the Registrar, Tripura University-appellants herein have been evidenced further to show that his progress was satisfactory and he was about to complete his title defence of the

proposed dissertation. On the part of learned counsel for both the parties, relevant provisions of the UGC Regulations, 2018 and 2022 have been brought to the Court's notice which are usefully extracted hereunder:

UNIVERSITY GRANTS COMMISSION

NOTIFICATION

New Delhi, the 18th July, 2018

“8.2 STUDY LEAVE:

i. The scheme of Study Leave provides an opportunity to avail of scholarships/fellowships awarded to the faculty who wish to acquire new knowledge and to improve analytical skills. When a teacher is awarded a scholarship or stipend (by whatever nomenclature called), for pursuing further studies, leading to a Ph.D./Post doctoral qualification or for undertaking a research project in a higher education institution abroad, the amount of the scholarship/fellowship shall not be linked to the recipient's pay/salary paid to him/her by his/her parent institution. The awardee shall be paid salary for the entire duration of fellowship/scholarship, provided, that he/she does not take up any other remunerative jobs, like teaching, in the host country.

ii. A teacher on Study Leave shall not take up, during the period of that leave, any regular of part-time appointment under an organisation in India or abroad. He/she may, however, be allowed to accept a fellowship in a research scholarship or an ad-hoc teaching and research assignment with an honorarium on form of assistance, other than the regular employment in an institution either any other form in India or abroad, provided, that the Executive Council/Syndicate of his/her parent institution may, if it to desires, sanction study leave on reduced pay and allowances to the extent of any receipt in this regard, in-lieu of teaching etc., which may be determined by his/her employer

iii. The study leave shall be granted to an entry-level appointee as Assistant Professor/Assistant Librarian/Assistant Director of Physical Education and Sport/College DPE&S (other than as Associate Professor or Professor of a University/College/Institution, who is otherwise eligible for sabbatical leaves after a minimum of three years of continuous service, to pursue a special line of study or research directly related to his/her work in the University/College/Institution or to make a special study of the various aspects of University organisation and methods of education, giving full plan of the work

iv. The study leave shall be granted by the Executive Council/Syndicate on the recommendation of the Head of the Department concerned. The leave shall not be granted for more than three years in one spell, save in exceptional cases, in which the Executive Council/Syndicate is satisfied that such extension is unavoidable on academic grounds and necessary in the interest of the University/College/Institution.

v. The study leave shall not be granted to a teacher who is due to retire within five years of the date on which he/she is expected to return to duty after the expiry of study leave.

vi. The study leave shall be granted not more than twice during one's entire career. However, the maximum period of study leave admissible during the entire service shall not exceed five years

vii. The study leave may be granted more than once, provided, that not less than five years have elapsed after the teacher/returned to duty on completion of the earlier spell of study leave. For subsequent spell of study leave, the teacher shall indicate the work done during the period of earlier leave as also give details of work to be done during the proposed spell of study leave.

viii. No teacher who has been granted study leave shall be permitted to alter substantially the course of study or the programme of research without the permission of the Executive Council/Syndicate, in the event the course of study falls short of study leave sanctioned, the teacher shall resume duty on the conclusion of the course of study unless the previous approval of the Executive Council/Syndicate to treat the period of short-fall as Extra-Ordinary leave has been obtained.

ix. Subject to the maximum period of absence from duty, on leave not exceeding three years, the study leave may be combined with the earned leave, half-pay leave, extraordinary leave of vacation provided that the earned leave at the credit of the teacher shall be availed of at the discretion of the teacher. When the study leave is taken in continuation of vacation, the period of study leave shall be deemed to begin to run on the expiry of the vacation. A teacher, who is selected to a higher post during the study leave, shall be placed in that position and shall get the higher scale only after joining the post.

x. The period of study leave shall count as service for purpose of the retirement benefits (pension/contributory provident fund), provided that the teacher rejoins the University/College/Institution on the expiry of his/her study leave, and serve the institution for the period for which the Bond has been executed.

xi. The study leave granted to a teacher shall be deemed to have been cancelled in case it is not availed of within 12 months of its sanction, provided, that where the study leave granted has been so cancelled. The teacher may apply again for such leave.

xii. A teacher availing himself/herself of the study leave, shall undertake that he/she shall serve the University/College/Institution for a continuous period of at least three years to be calculated from the date of his/her resuming duty on the expiry of the study leave

xiii. A teacher-

(a) who is unable to complete his/her studies within the period of study leave granted to him/her or

(b) who fails to rejoin the services of the University on the expiry of his/her study leave or

(c) who rejoins the service of the university but leaves the service without completing the prescribed period of service after rejoining the service or

(d) who, within the said period, is dismissed or removed from the service by the University shall be liable to refund, to the University/College/Institution, the amount of the leave salary and allowances and other expenses, incurred on the teacher or paid to him/her or on his/her behalf in connection with the course of study.

UNIVERSITY GRANTS COMMISSION NOTIFICATION

New Delhi, the 7th November, 2022

4. Duration of the Programme.- (1) Ph.D. Programme shall be for a minimum duration of three (3) years, including course work, and a maximum duration of six (6) years from the date of admission to the Ph.D. programme.

(2) A maximum of an additional two (2) years can be given through a process of re-registration as per the Statute/Ordinance of the Higher Educational Institution concerned; provided, however, that the total period for completion of a Ph.D programme should not exceed eight (8) years from the date of admission in the Ph.D. programme.

(3) Female Ph.D. Scholars may be provided Maternity Leave/Child Care Leave for up to 240 days in the entire duration of the Ph.D programme.

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13. Ph.D. through Part-time Mode-

(1) Ph.D. programmes through part-time mode will be permitted, provided all the conditions stipulated in these Regulations are fulfilled.

(2) The Higher Educational Institution concerned shall obtain a “No Objection Certificate” through the candidate for a part-time Ph.D. programme from the appropriate authority in the organization where the candidate is employed, clearly stating that:

i. The candidate is permitted to pursue studies on a part-time basis

ii. His/her official duties permit him/her to devote sufficient time for research.

iii. If required, he/she will be relieved from the duty to complete the course work.

(3) Notwithstanding anything contained in these Regulations or any other law, for the time being in force, no Higher Educational Institution or research institution of the Central government or a State Government shall conduct Ph.D. programmes through distance and/or online mode.”

While the writ petitioner insists that there is no change in the mode of pursuing Ph.D programme even while on duty, the University has a case that the Ph.D programme for which initially three years study leave was to be pursued on a full time basis. Though the University committed a mistake by granting eighteen months leave initially, but the programme sanctioned was not a part-

time Ph.D Course in favour of the writ petitioner. Now if he wants to pursue Ph.D programme, it would be a part-time programme for which Executive Council's permission is necessary.

7. We have given anxious consideration to the rival submission of the parties in the gamut of the canvas of facts noted above and the relevant UGC Regulations.

We find that by mistake of the University, instead of sanctioning three years study leave as per Regulation 4 of the UGC Regulations, 2022, sanctioned only eighteen months leave in favour of the petitioner/respondent herein. In no way, he could have completed a regular course of Ph.D in eighteen months as the minimum duration for completion of Ph.D Course is three years extendable up to six years. Now that the mistake has occurred and the petitioner bona fide has sought to resume duties on expiry thereof failing which he would be liable for penal action, University cannot refuse him to rejoin. The question however which has been left open by the learned Writ Court is how to pursue the Ph.D Course. In our considered opinion, since the Ph.D programme sought to be pursued by the petitioner was a regular programme, and now he wants to continue it on part-time basis while discharging his duties as a Teacher in the University upon his rejoining, such a call has to be taken by the competent authority under the UGC Regulations i.e. the Executive Council; and that too upon fulfillment of the required conditions stipulated in the Regulations. This we say so for the reason that petitioner has two options – (i) either to rejoin after expiry of eighteen months period and drop the Ph.D programme which he was pursuing as a regular course or to continue it as a part-time while

discharging his duties as a teacher; or (ii) to seek further leave to continue his remaining Ph.D programme as full time course. Petitioner is an employee of the University and the University is guided by the UGC Rules & Regulations. As such, whether petitioner is entitled to pursue his course in a regular manner or in a part-time manner is a decision which is to be taken by the Executive Council of the appellants-University. We, therefore, direct that upon acceptance of joining of the petitioner, the Executive Council would take a decision on the request of the petitioner to pursue his remaining Ph.D Course while on job. Petitioner/respondent herein is allowed liberty to place his case before the Executive Council through the Registrar of the University which should be given due consideration while taking such a decision. His joining in the prescribed format from the due date through proper channel shall be accepted by the appellants-University.

8. With the aforesaid observations and directions, the instant writ appeal is disposed of though the impugned directions do not call for any interference.

9. Pending application(s), if any, shall also stand disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

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