



Serial No.07
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.35/2024

Date of Order: 11.11.2024

Dr. Bela Keshan

..... Appellant

Vs.

1. The North Eastern Hill University, represented by the Registrar, NEHU Campus, Shillong-793022.
2. The Vice Chancellor, North Eastern Hill University, represented by the Registrar, NEHU Campus, Shillong-793022.
3. The Registrar, North Eastern Hill University, represented by the Registrar, NEHU Campus, Shillong-793022.
4. The Head of Department of Zoology, North Eastern Hill University, NEHU Campus, Shillong-793022. Respondents

Coram:

Hon'ble Mr. Justice I.P. Mukerji, Chief Justice
Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Appellant	:	Mr. N. Sharma, Adv with Mr. S.P. Sharma, Adv Mr. A.M. Pala, Adv
For the Respondents	:	Mr. S. Sen, Adv with Ms. S.A. Shallam, Adv

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

Note: For proper public information and transparency, any media reporting this judgment is directed to mention the



composition of the bench by name of judges, while reporting this judgment/order.

JUDGMENT: (per the Hon’ble, the Chief Justice) (Oral)

This appeal concerns a lady professor of Zoology in North Eastern Hill University (NEHU).

Just before the country wide lockdown was declared in March, 2020, on 20th March, 2020 she took leave including station leave for three days and left for her residence in Kolkata.

Covid had started to rage at that time and immediately thereafter, a country wide lockdown was declared by the Prime Minister.

She did not come back.

Learned counsel for the University submits that leave was not applied for by her.

It is brought to our notice that the University Grants Commission (UGC) had issued a directive that during this critical period classes may be conducted online. The NEHU in its notification dated 31st March, 2020 (at page 340 of the appeal) acknowledged this and issued an advisory that faculty members, students and researchers may engage in “online learning”.

Learned counsel for the appellant/petitioner submits that the appellant between 10th April, 2020 and 7th December, 2020 conducted



numerous classes online and sent a report of them to the concerned department of the University. There is nothing on record to suggest that the department did not accept the report or dissuaded the appellant from continuing to teach online.

However, on 4th May, 2020, the University issued a notice at page 341 of the appeal to the effect that “offices of the University shall function from 5th May, 2020 with 100% strength for Group A and Group B officers/officials and 33% strength for Group C & D”. Learned counsel for the University submits that this notice covered the teaching staff. However, incongruity appears in the notice to the extent that in paragraph (vi), it is stated the teachers would “keep in touch” with students “through e-learning”.

There appears to be no directive of the UGC at that point of time directing 100 per cent attendance in teaching institutions or anything close to it.

Regular classes ultimately commenced on 31st October, 2020.

The appellant resumed her duties from 11th December, 2020.

The University had taken a very extraordinary and strict stand that from May, 2020 onwards there should be physical attendance and those who did not attend *albeit* covid, would have to apply for and take



an appropriate leave of absence to be granted strictly, according to the rules.

On 16th December, 2020 at a meeting of the Executive Council of the University, it was resolved that the Establishment-II section would examine the leave application of the appellant according to the rules. On 30th June, 2021, the Joint Registrar Establishment-II communicated the following decision to the appellant:

“In pursuance of the Executive Council resolution No.EC:175:2020:6:7 : (i) and resolution No.EC:177:2020:6:3 (ii), I am directed to inform you that you are required to apply for proper leave for the period of your absence from the Headquarters for 171 days during the year 2020.

As per your leave record you are having only 72 days Earned Leave and 218 days Half Pay Leave at your credit, you are required to apply for leave as mentioned below in prescribed leave application format to be routed through the Head of Department of Zoology at the earliest for further necessary action on the matter.”

It appears that on 5th July, 2021, the appellant made an application for leave in terms of the communication of the University dated 30th June, 2021. However, learned counsel for the appellant points out to an averment in paragraph 19 of the petition at page 47 that the appellant had to comply with the directions in the said communication dated 30th June, 2021 “under compelling circumstances involuntarily as explained above”.



Covid was a catastrophe of the greatest magnitude to have affected the country in recent years. It was most sudden and of colossal impact. Nobody had any clear idea of this pandemic before its onset. It engulfed the whole country and raged for several months and years. Lockdown was declared throughout the country and continued for months, fully or partially. The Health department of the government of India was very firm that as far as possible people should stay indoors so as to prevent the risk of transmission of this highly infectious disease. Business, academic and other activities were encouraged but through least human interaction or contact as possible. Online work from home was encouraged. This justified the UGC directive that teaching might be conducted online. The NEHU also commenced online teaching by their notification dated 21st March, 2020.

The appellant/writ petitioner from Kolkata, delivered her lectures and study materials online and furnished reports to the University which has accepted by it.

The notice of the University dated 4th May, 2020 directing hundred per cent attendance was not in consonance with the UGC directive. In any case, the online classes conducted by the appellant were accepted by the University.



The appellant ultimately joined service on 11th December, 2020.

More importantly, a humane and sympathetic consideration should be made of persons who could not do duty physically during this period but who were willing to work and did contribute by working online from their home. Such appears to be the case with the appellant. Moreover, the nearly total absence of convenient transportation between Kolkata and Guwahati in this period is also a fact to be taken into account.

We are of the view that the decision dated 30th June, 2021 cannot be sustained.

Till the University started physical classes on 31st October, 2020, the attendance of the appellant has to be regularised by treating those days she took online classes as on duty. However, we make it clear that her absence from 31st October, 2020 till her rejoining on 11th December, 2020 shall not be considered as her being on duty. Her leave application has to be considered accordingly. The decision dated 30th June, 2021 of the Joint Registrar Establishment-II is quashed and set aside.



On the basis of the above observations, the Executive Council is to revisit and reconsider its resolution dated 20th December, 2020 and the decision dated 30th June, 2021 of the Joint Registrar Establishment-II and to give a reasoned decision within three months from the date of communication of this order after giving an opportunity of hearing to the appellant.

The impugned judgment and order dated 20th May, 2024 is set aside. The appeal is allowed.

(B. Bhattacharjee)
Judge

(I.P. Mukerji)
Chief Justice