

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 227 of 2023

Date of Decision: 20.05.2024

Dr. Bela Keshan
D/o Late Sitaram Keshan,
Resident of GF 16/1,
Rabindrapally, Jordabagan, Jyangra,
Baguiati, Kolkata, Desh Bandhu Nagar,
North 24, Paraganas, West Bengal,
PIN- 700059

:::Petitioner

-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 H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S.P. Sharma, Adv.
Mr. A.M. Pala, Adv.

For the Respondent(s) : Mr. S. Sen, Adv.
Ms. S. 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 |
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JUDGMENT AND ORDER

1. The brief facts of the case are that the petitioner who is a Professor in the department of Zoology, NEHU Shillong, on the non-condonation of her leave for the period from 28.05.2020 to 14.06.2020, and from 11.07.2020 to 12.12.2020, had preferred representations dated 29.10.2021 and 03.02.2022, attributing the ground for non-attendance of duties due to the COVID-19 pandemic, and on the rejection of the same, has been constrained to approach this Court.

2. It has been submitted by the learned counsel for the petitioner that the petitioner had initially sought leave for 3(three) days from

23.03.2020 till 25.03.2020, with permission to leave station, but however, she could not join her duty after the expiry of her leave period, as by then the COVID-19 pandemic had set in, and lockdown had been declared. The petitioner he submits, due to the extension of lockdown, informed the Head of Department by email on several dates i.e. 14.04.2020, 04.05.2020 and 17.05.2020, about her inability to return to Shillong, and as the phased reopening continued till 30.09.2020, coupled with the fact that educational institutions, had not been opened, worked from home, as per advice. He further submits that the petitioner had informed the University on 01.10.2020, that she would continue to work from home because of the pandemic, and that in this regard, various guidelines had also been issued by the Government of Meghalaya/Ministry of Home Affairs advising and permitting faculty members to work from home, and to take online classes.

3. Her continued absence it is contended was not irregular, inasmuch as, the HOD Zoology assigned her duties while she was in Kolkata, and the petitioner accordingly worked from home, by taking online classes and finished all her assigned teaching research and examination duties with a regular report being sent to the department in the prescribed format. It is submitted that on receipt of the first

impugned letter dated 05.10.2020, directing her to report for duty by 12.10.2020, the petitioner replied vide emails dated 09.10.2020, 11.10.2020, 11.11.2020 and 26.11.2020, requesting the respondents to allow her to continue to work from home. Thereafter he submits, the petitioner resumed charge on 11.12.2020, but the respondents by a Resolution had decided that as despite the letter dated 05.10.2020, s the petitioner had failed to join on or before 12.10.2020, her leave application would be examined as per existing rules and the salary be withheld from the month of December 2020, till finalization of her entitlement/deduction of allowances during her leave/absence from the headquarter. The petitioner he submits, as desired by the respondents which was communicated by letter dated 30.06.2021, requiring her to apply for proper leave for the period of absence of 171 days, then accordingly applied for the same vide leave application dated 05.07.2021.

4. The learned counsel submits that the respondents then on 12.07.2021, passed an order regularizing the leave of the petitioner in various categories, to which the petitioner being aggrieved preferred an appeal on 29.10.2021, for condonation of forced leave for the period from 28.05.2020 to 14.06.2020, which came to be rejected by the impugned order dated 15.12.2021. It is urged that, the absence of the

petitioner from station being through no fault of hers, but due to the pandemic, the respondents had acted arbitrarily, inasmuch as, she had performed her duties and completed works as assigned to her by the University, and the treatment meted out to her is exploitative and discriminatory, apart from the misuse of services rendered by her. It is lastly submitted that, the petitioner has been penalized without due process being followed, and as such, the respondents are liable to be directed to condone her leave and grant her relief as prayed for.

5. In reply Mr. S. Sen, the learned counsel for the respondents submits that the petitioner was due to join back on 26.03.2020, but due to the COVID-19 pandemic, the University vide notification dated 23.03.2020, had permitted the teaching and non-teaching staff to work and conduct their online classes from home, but thereafter, vide notification dated 04.05.2020, work from home was discontinued from 05.05.2020. But to avoid crowd and for maintaining social distancing, as per the guidelines of the Government, he submits online classes were allowed to be continued. The writ petitioner however he submits, without seeking leave, and or extension or permission to remain out of station, sought permission by email to conduct online classes, which was brought to the notice of the Registrar of the University by the HOD of Zoology on 16.09.2020, who informed about the petitioner's

continued absence, though her physical presence was required for examination related and other administrative responsibilities, and a request was made by the said letter, for the Registrar to do the needful in this regard. As such, he submits a letter dated 05.10.2020, was sent informing the writ petitioner that the authority was viewing her case seriously, for not being present or reporting to the department, and the petitioner was directed to report to the department latest by 12.10.2020. Thereafter he submits, the Executive Council of the University on 15.10.2020, passed a Resolution that necessary concession may be given only to the period of complete lockdown to faculty members, and that anyone was out of station, was to apply for proper leave, failing which necessary action would be taken.

6. The writ petitioner he submits, then by letter dated 07.12.2020, intimated that she would join and submit her charge report on 11.12.2020, and on 16.12.2020, concerning her case of prolonged absence, the same was taken up by the Executive Council, and it was resolved therein to the effect that, for the period the writ petitioner remained absent from station without any station leave, the same would be regularized as per leave rules. It is further submitted that, this Resolution was to apply as well to all other faculty members/staff, in the matter of prolonged absence of a similar nature. The learned

counsel submits that there is no arbitrariness in the action of the respondent University, as the writ petitioner was granted all concession for the period of complete lockdown, and her absence w.e.f. 28.05.2020 to 10.12.2020, was regularized by granting available sanctioned leave. This he submits, was in line with the decision taken on 15.10.2020, that faculty members on an unauthorized leave, after the complete lockdown were to apply for leave to regularize their unauthorized absence. He lastly added that, the respondent University did not take any disciplinary action, as is warranted in cases of unauthorized absence, taking into account the inconvenience caused by COVID restrictions. He submits that there being no illegality, and the petitioner having committed serious lapses in remaining absent, no injustice has been caused.

7. Heard learned counsel for the parties. From the submissions of the learned counsels, it is seen that the only point to be examined by this Court, is whether the action of the respondent University in not condoning the leave of the petitioner, and non-consideration of her various representations is arbitrary, discriminatory and whether the same has infringed upon her rights, in any manner as alleged. Without recapping or narrating the facts any further, inasmuch as, the same has been adequately dealt with by the respective counsels, this Court will

confine itself only to the relevant materials to determine, as to whether the impugned action is to be interfered with in judicial review.

8. It is correct that the relevant period, when the petitioner was not present in station was during the highs and lows of the COVID pandemic, on which the main ground seeking condonation of her leave has been based upon. However, what cannot be overlooked is that, the petitioner apart from emails for grant of permission to work from home, no permission was sought to remain out of station. It is also seen that, notifications and notices have been issued by the respondent University from time to time, with regard to the functioning of the University and its employees. Her absence as submitted earlier was brought to the notice of the Registrar vide letter dated 16.09.2020, which prompted the respondents to issue a letter dated 05.10.2020, which is reproduced herein below.

*North-Eastern Hill University
Nehru Campus, Shillong 793 022 (Meghalaya)*

No.F.17-353/Estt.II/2018-6711

Dated 5th October, 2020.

To

*Prof. Bela Keshan,
Deptt. of Zoology,
NEHU, Shillong*

Sub: Absence and negligence of duty.

Madam,

I am directed to inform you that the Authority has viewed your case very seriously for not being present/reported in the Department. In this connection, it is hereby directed that you should report to the Department immediately latest by 12th October, 2020 and submit your Charge Report through proper channel accordingly.

Your prolonged absence from the Department till the date of resumption of duties will be settled strictly as per provision of the rules only after your joining the Department.

This issues with the approval of the Vice-Chancellor.

Yours faithfully,

Joint Registrar(Estt.II).

Copy to:

- 1. The Sr. P.S to the Vice-Chancellor, NEHU, Shillong for V.C's kind information.*
- 2. The P.S to the Pro-Vice-Chancellor, NEHU, Shillong for P.V.C's kind information.*

3. *The Head, Department of Zoology, NEHU, Shillong*
4. *The P.A. to the Registrar, NEHU, Shillong for Registrar's kind information.*
5. *Personal file.*

9. The Executive Council meeting dated 15.10.2020, in its Resolution had also recorded as follows.

“(i) Prolonged absence from duty/Headquarter by Faculty Members, Officers and Staff:

No. EC:175:2020:6:7(i): The Council was apprised that so many Faculty members/staff/others are in the habit of leaving the station without sanction of proper leave and remain absent from duty for a long time, which affects the normal functioning of the Department/academic activities. From the outstation/home town, the Faculty members/staff informed that they are on ‘work from home’ in view of the Covid-19 Pandemic. The Council deliberated on the matter.

The Council RESOLVED that no staff/Faculty Member(s) should leave the station without sanction of proper leave and that action as per Rule will be taken for such unauthorized leave/absence from duty.

The Council further RESOLVED that necessary concession may be given only for the period of complete lockdown that is, from the date lockdown was announced by the Government of India till the period of Railways/ Airlines/travel facilities being operational/functional. Thereafter, anyone who was out of station has to apply for

proper leave, failing which necessary action need to be taken.

The Council also RESOLVED to list out the name of Faculty members/Officers/staff from the records, by the concerned Section, who are in out of station now and take necessary action as per Rule(s). The Council also RESOLVED that a Circular in this regard will be issued to all the Department from the Administration.

The Council also RESOLVED that “work from home” is to remain in station and not out of station, and has to be examined case to case basis.

The Council also RESOLVED that Casual Leave for a period of more than 5 days at a stretch, should not be allowed.”

10. It is noted that even after the abovementioned letter was issued, the writ petitioner did not resume her duties on 12.10.2020, nor did she take heed of the Executive Council’s resolution adopted on 15.10.2020, and it was only on 11.12.2020, that she resumed charge. This prolonged absence, taking into account the COVID restrictions and the representations and letters of the petitioner to the respondents, was then deliberated by the Executive Council in its meeting dated 16.12.2020, and the Resolution arrived at which is very relevant is reproduced herein below.

*“(ii) Prolong absence of Prof. Bela Keshan,
Department of Zoology, NEHU, Shillong:*

No.EC:177:2020:6:3:(ii): The Council was apprised that Prof. Bela Keshan, Department of Zoology, NEHU was out of station on Casual Leave from 23rd to 25th March, 2020 after taking station leave permission from March, 2020 to 25th March, 2020 to visit her Home town, Kolkata. However, the Head, Department of Zoology, NEHU vide letter dated 16.9.2020 informed that Prof. Bela Keshan is out of station on a casual leave (23-25 March, 2020) and station leave from 20th to 25th March, 2020 till 16th September, 2020 and in between Prof. Keshan has sent some email letters for grant of permission to work from home in view of Covid-19 pandemic lockdown or other reasons, and that the email letters have been forwarded to the Registrar/AR (Estt-II) for necessary action. Now, the Department has started examination related work, besides other administrative responsibilities to faculty members and therefore, Prof. B. Keshan's presence is required in the Department and needful to be done at the earliest. The matter of absence and negligence of duty was communicated to Prof. Bela Keshan from the Estt.II Section vide letter No.F.17-353/Estt.II/2018-6711 dated 5th October, 2020 informing her that the Authority has viewed very seriously for not being present/reported in the Department and that she should report to the Department immediately latest by 12th October, 2020 and submit her charge report through proper channel. She was further informed that her prolonged absence from the Department till the date of resumption of duties will be settled strictly as per provision

of the rules only after her joining the Department. In response to that letter, Prof. Bela Keshan has furnished her reply vide letter dated 9th October, 2020 that due to extraordinary situation of spread of Covid-19 pandemic she was compelled to stay back in Kolkata and carrying out her duties online from Kolkata and that she finished entire assigned syllabus for the M.Sc. and Ph.D. Course work classes (Even Semester 2020) online and have also conducted Internal Assessment Test and set the question papers for the Internal Test/End Semester Examination, while working from home at Kolkata. Now, due to serious sickness of her aged mother, she is requesting to allow her to stay in Kolkata and extend her physical reporting in the Department till such time the Doctor advice that her mother is medically fit. Due to Covid-19 pandemic, she is requesting to allow her to take her teaching/learning activities online from her home at Kolkata or allow her to take leave as permissible under NEHU Rules. The Council was further apprised that Prof. Bela Keshan has reported to her duty on 11.12.2020 and submitted the Charge Report to the Estt.II Section. The Council deliberated on the matter.

The Council RESOLVED that Establishment II Section will examine her leave application as per existing Rules and withholding her salary from the month of December, 2020 onwards till finalization of her entitlement/deduction of allowance(s) during her leave/absence from the Head Quarter.

The Council further RESOLVED that Establishment I and Establishment II Section will take action in the same line in respect

of other Faculty member(s)/staff on the matter of prolong absence of similar nature.”

11. What emerges from the facts as laid out above, in the considered view of this Court, is that the action of the respondents in arriving at a decision to require the petitioner to apply for proper leave for the period of absence from headquarters for 171 days, is neither arbitrary or unreasonable. From the materials as seen and discussed above, the petitioner notwithstanding the pandemic, was duty bound to at least seek permission for her absence from station and or to apply for leave. The decisions therefore, as seen from the Executive Council resolutions and other correspondence have been arrived at after due consideration and the same also being uniform in its application and implementation to all similarly situated faculty members, no case of discrimination has also been made out.

12. Accordingly, for the reasons stated above, the writ petitioner is not entitled to the reliefs as claimed, and the writ petition is dismissed.

13. No order as to costs.

Judge

Meghalaya
20.05.2024
“D.Thabab-PS”