

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3159 of 2017**

- Deepak Kumar Rathore S/o Mevaram Rathore, Aged About 32 Years Presently Posted As Assistant Professor (Electronics & Communication Engineering) At Gurughasidas Vishwavidyalaya, Koni, Bilaspur, R/o D - 4, Type – III, G G U Campus, Koni Bilaspur, District Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

- Gurughasidas Vishwavidyalaya, Bilaspur, Through Its Registrar, Koni Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondent

For Petitioner	:	Shri Mateen Siddiqui, Advocate
For Respondent	:	Shri Neeraj Choubey, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****19/07/2017**

1. Taking into consideration the urgency in the matter, keeping in view the relief sought for by the petitioner with the consent of the counsel on either side, the matter was finally heard.
2. Challenge in the present writ petition is the order dated 14.07.2017 (Annexure P-1), passed by the Registrar (Officiating) of the respondent University. By the said impugned order it has been ordered that all those decisions which have been taken by the University in grant of No Objection Certificate after 05.04.2017 shall stand canceled and it has also been observed in the impugned order that the further decision so far as the grant of study leave is concerned, the same shall be on the basis of the revised instructions and guidelines.

3. The fact relevant for adjudication of the present dispute is that the petitioner is an Assistant Professor working in the Electronics & Communication Engineering department of the University. He is working with the respondent since 2011 and is at a present regular Assistant Professor. The next promotional avenue which the petitioner has requires the qualification of a Ph.D. The University Grants Commission (for short 'the UGC') as well as AICTE has a policy for grant of study leave for the purpose of obtaining higher qualification. The said policy was also made applicable in the respondent university, which too permitted its teaching staff going for higher studies grant of study leave.
4. The petitioner applied for admission in the Indian Institute of Technology, Guwahati (for short' the IIT') for pursuing his Ph.D. Program. The said institute on scrutiny of the claim of the petitioner selected the petitioner for the said Ph.D. Course. The petitioner keeping in view the admission after selection in the IIT, Guwahati, moved an application for grant of study leave with the respondents. The respondents after due consideration of the application vide their letter dated 13.06.2016 issued an NOC in favour of the petitioner for undergoing the Ph.D. Course. For some unavoidable reasons, the petitioner could not proceed for the course in the year 2016 and therefore, moved another application on 16.02.2017 for renewing his request for grant of study leave from a later date. That on 28.04.2017 again vide an order passed by the Registrar (Officiating) i.e. the same officer who had issued the impugned order also sanctioned study leave to the petitioner from 18.07.2017 for a period of two years. Simultaneously the Registrar also issued a letter sponsoring the petitioner for pursuing his Ph.D. Course at the institute IIT, Guwahati. A communication in this regard issued is Annexure P-8.

5. Having sent the NOC and the sponsorship, a notification has been received by the petitioner vide mail dated 15.06.2017 (Annexure P-10) requesting the petitioner to register with the course by 20th of July, 2017. All arrangements have been made from the petitioner side for proceeding with the course when suddenly like a bolt from the blue, the impugned order Annexure P-1 was issued and wherein it has been mentioned that all those decisions in granting study leave and NOC etc subsequent to 15.04.2017 shall stand vacated. The only reason assigned in the said communication is that the earlier policy in respect of grant of study leave was for a stipulated period and that thereafter it has not been revised or reviewed and therefore, pending review/reconsideration of the earlier policy, decisions taken in the intervening period after 15.04.2017 was ordered to be canceled. It is this order which is under challenge.
6. The counsel for the petitioner submits that the petitioner with great hopes for future progress in his career had sought for admission in IIT for pursuing his Ph.D. Course and the same was with due permission of the higher authorities in the University. The request of the petitioner was accepted too by the respondents as early as on 13.06.2016. The respondents themselves had issued an NOC in this regard and a subsequent letter was also issued to IIT, Guwahati reflecting the sponsorship of the petitioner made for the same. It was further contented by the petitioner that once when all necessary steps have been taken by the petitioner for proceeding on leave and was about to start his journey to Guwahati, the order of cancellation has been issued causing substantial setback to the petitioner and the result of which would also have a adverse bearing on his career. It was also contended by the petitioner that the policy of the UGC so also of the AICTE is still in force, which too specifically provide for grant of sanction

study leave for undertaking the Ph.d. Course and other like higher studies.

7. Per contra, Shri Neeraj Choubey, counsel appearing for the respondent opposing the petition submitted that the writ petition in the present nature is premature as there is a provision of preferring an appeal to the executive council. Having not availed the same, the present writ petition deserves to be rejected only on that ground. It was further contended by the counsel for the respondent that since the earlier sanction granted to the petitioner was for the academic session 2016-17 and since the petitioner did not proceed to avail the said leave then the chance of the petitioner had lapsed then itself and the subsequent granting of leave to the petitioner was not with the approval and sanction of the Executive Council. It was further contended that since the earlier policy pertaining to grant of sanction study leave has already lapsed, until and unless a new policy/instructions/guidelines is framed, the petitioner cannot be granted study leave. It was further pleaded by the counsel for the respondent that another reason for the issuance of Annexure P-1 is on the ground of there being shortage of teaching staff with the respondent University. That in the event, the petitioner and similarly placed persons are allowed study leave then the University would not have sufficient teaching staff to take proper care of the various courses which are being under taken by the students in the University. It would further hamper the studies of the students who are on the roll of the respondent university. Further if the management has as a policy decision taken in the larger interest of the students, the same cannot be said to be arbitrary or malafide and the same would also be only an administrative decision which may not fall for judicial review or scrutiny invoking the extra ordinary writ powers under Article 226 of the Constitution of India conferred upon this Court and pray for the rejection of the petition.

8. Having considered the rival contentions on either side and on perusal of the record some of the undisputed or a admitted position as it stands from the record are; the petitioner is a regular Assistant Professor teaching in the Electronic and Communication Engineering Department under the respondents. It is also not in dispute that for next promotional avenues the requirement of a Ph.D. is very much necessary. The other admitted position is the application which the petitioner had made in the year 2016 it was acted upon and an order was passed on 13.06.2016. It is also not in dispute that since the petitioner could not proceed to take admission in the academic session 2016-17, he had made another application for permitting him to undertake the course starting from July 2017. The said application was accepted by the respondents and an order in this regard was issued on 28.04.2017.

9. Undisputedly, the respondent also issued a sponsorship letter to the institute where the petitioner intended to undertake the Ph.d. Course. Based upon which a communication has been received by the petitioner through the mail asking him to get registered himself by 20th of July, 2017.

10. Now if we look to the guidelines of the UGC so far as the study leave is concerned, the guidelines do provide for grant of leave to undertake higher studies. Clause 8.13 also reflects that the study leave granted to a teacher shall be taken to be canceled only after 12 months of its sanction. In the instant case, the original sanction was granted on 13.06.2016 and the subsequent sanction was granted on 28.04.2017, thus it is well within the 12 months period and therefore, it cannot be presumed to have stood canceled. Clause 13 further has a proviso clause where the teacher can again apply for if his leave earlier granted is canceled.

11. Going through the return filed by the respondent and the stand that the respondent has taken, that of paucity of sufficient staff in the University, the academic session was in the year 2016-17 and it was also the stand by the respondent that grant of study leave is not a matter of right but is at the discretion of the respondents and that in the event of an administrative exigency the leave granted to a person can be canceled. The stand of the respondent was also that since the petitioner has not availed his right for study leave in the year 2016-17 in the subsequent year this right can be availed by some other candidate.

12. Nowhere in the entire return of the respondent do they take a stand that because of the lapse of the earlier policy pertaining to grant of study leave and the policy being under consideration for review the impugned order has been passed. It is all more pertinent to take note of the fact that all these grounds which have been raised by the respondent in their return are not the basis on which the impugned order Annexure P-1 has been issued, this by itself shows a apparent contradiction in the stand taken by the University in their return and the stand taken by the University while issuance of Annexure P-1.

13. What cannot be lose sight is that the fact that getting admission for a Ph.D. Course from an IIT after having applied as per the due procedure and after obtaining due sanction, NOC and sponsorship from the respondent, the same should not and could not have been canceled without there being any sufficient cogent justification. The entire grounds which the respondents have raised in the return seems to be an after thought. The fact that the leave was not sanctioned by the Executive Council also cannot be accepted for the reason that in June 2016 when the petitioner was for the first time granted NOC for Ph.d. Course the same was also issued by the same

authority and the cancelation also has been issued by the same authority without there being any reference what so ever to the approval or sanction necessary of the Executive Council. In the event, if the petitioner is not allowed to participate in the Ph.d. Course from July 2017 onwards the Institute i.e. IIT, Guwahati may not permit him to participate in the Course at a later stage for the reason of not joining or not getting himself registered by July, 2017. What also strikes the conscious of the Court is the fact that the petitioner was granted leave in June, 2016 and the NOC was also issued in the year 2016, having granted NOC as well as approval for pursuing his Ph.d. Course in the year 2016 i.e. the period when according to the respondents themselves the policy of the University for grant of leave was in force, the said order has not been canceled till date. The only development that has taken place is that instead of granting him leave in the year 2016 itself, the respondent had permitted him study leave w.e.f. 18.07.2017 as is evident from the letter dated 28.07.2017.

14. In other words in the case of the petitioner the approval of leave was sanctioned and the NOC was in fact granted in the year 2016 itself. It is only the commencement of the leave which has been accepted vide order dated 28.04.2017. What is also pertinent to take note of is that the effect of the impugned order is the cancellation of an order which has been issued long back. Which means that the effect of the impugned order is retrospective. Once when a right has accrued in favour of a person, the same could not have been snatched away by passing an order making its effect retrospective and that too with detriment to the interest of the person.

15. The action on the part of the respondent in issuance of Annexure P-1 therefore is bad in law, arbitrary and the same deserves to be and is thus set aside and quashed. True it is that the decision Annexure P-1 is an

administrative decision but since a right which had accrued in favour of the petitioner has been adversely affected and the fact that the impugned order has a direct bearing on the promotional avenue as well as career graph of the petitioner coupled with the fact that the petitioner could have approached the Executive Council but since the time being so short with the petitioner to get himself registered at IIT, Guwahati, the said remedy may not be efficacious and pursuing that may have a irreparable detriment to the petitioner and his career thus in the peculiar facts of the case this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India has entertained the writ petition and the petition is thus allowed. The impugned order is set aside/quashed. Needless to mention that the quashment of the impugned order would not come in the way of the respondent University in reconsidering their policy so far as the grant of study leave is concerned. They shall be at full liberty to reconsider/revise/review the policy.

16. The writ petition stands allowed and disposed off accordingly. No order as to cost.

Sd/-

P. Sam Koshy
Judge

Ashu