

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 3572 of 2017**

Mandvi Sahu W/o Dr. T N Mourya, aged about 35 years, presently working as Assistant Professor, Institute of Management, Pt. Ravi Shankar Shukla University, Raipur, Tahsil & District Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. The State of Chhattisgarh through the Secretary, Department of Higher Education, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh.
2. University Grant Commission through the Secretary, New Delhi, I T O.
3. Pt. Ravi Shankar Shukla University, Raipur through the Vice Chancellor, Pt. Ravi Shankar Shukla University, Raipur, Tahsil & District Raipur, Chhattisgarh.
4. The Registrar, Pt. Ravi Shankar Shukla University, Raipur Tahsil & District Raipur, Chhattisgarh.
5. Dr. A. K. Shrivastava, Director, Institute of Management, Pt. Ravi Shankar Shukla University, Raipur, Tahsil & District Raipur, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri S. C. Verma, Advocate
For Respondent No.1/State	:	Smt. M. Asha, Panel Lawyer
For Respondent No.2	:	Shri S. S. Rajput, Advocate
For Respondents 3 to 5	:	Shri Neeraj Choubey, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****05/09/2017**

The present writ petition has been filed seeking for issuance of a writ of mandamus quashing Annexures P-1 & P-2 with further prayer of a direction to the respondents to consider the case of the petitioner for grant of study leave with which she could pursue her higher study for doing Ph.D course from the

National Institute of Food Technology and Entrepreneurship Management, New Delhi.

2. The facts of the case in brief are that the petitioner is presently working as an Assistant Professor in the department of the Institute of Management at Pt. Ravi Shanker Shukla University, Raipur. The initial appointment of the petitioner was on ad hoc basis and on completion of probation period, the service of the petitioner was confirmed w.e.f. 20.11.2016. The petitioner had vide letter dated 05.04.2017 applied for grant of NOC to take admission as part time Ph.D. course in the year 2017-18. In her application she had specifically mentioned that she intends to get her Ph.D from the National Institute of Food Technology Entrepreneurship and Management, Govt. of India, Kundli, Sonapat, Haryana. This application was duly forwarded by respondent no.5 and vide Ex. P-2 dated 29.07.2017 a formal approval was granted for undertaking the course of Ph.D. However, suddenly on the same day i.e. 29.07.2017, an order was passed by the respondents University intimating the petitioner that she cannot be granted study leave by virtue of Rule 42 Sub Rule 5 (1) of the Chhattisgarh Civil Services Leave Rules, 2010.

3. It is this action on the part of the respondent University which has led to the filing of the present writ petition.

4. The solitary contention of the counsel for the petitioner is that the provisions of Section 42 (5) of the Chhattisgarh Civil Services Leave Rules, 2010 would not be applicable for the reason that the respondents' establishment is also governed by the guidelines and regulations that are made by the University Grants Commission (in short 'UGC'). It is the contention of the counsel for the petitioner that it is the guidelines and the regulations which are governing the educational institutions particularly at university level as well as college level, therefore the regulations framed by the UGC as also the guidelines framed from time to time all have a binding effect with the statutory

force and that the universities are bound to follow the guidelines uniformly so that the universities under the control of the UGC shall have a uniform pattern. According to the petitioner, as per the guidelines of the UGC, the minimum length of service required for grant of Study leave is only three years which the petitioner had already completed about two years back. Since the order of appointment was of the year 2002, she has completed three years of service since November, 2015. Counsel for the petitioner made a statement before the Court as to the fact that the petitioner is also ready to forgo the salary and other monetary emoluments which she draws from the university for the period during which she would undergo her Ph.D course. According to him, this money which the petitioner is ready to forgo can be used for engaging a part time teacher who could be paid the remuneration which the petitioner would forgo. According to the counsel for the petitioner, Section 26 of the UGC Act itself envisages a Clause which empowers the UGC to regulate all the universities affiliated to the UGC in India. This Act empowers the UGC to frame rules and regulations necessary to monitor the universities and further periodical guidelines and revised guidelines also have a force of law. One such guidelines so issued by the UGC is pertaining to grant of study leave for higher education for the Assistant Professors.

5. Counsel for the petitioner referred to Annexure P-6, revised guidelines of the UGC dated 07.06.2013, Clause 3 of which reads as under:

“3. Study leave may be granted to entry-level appointees as Assistant Professor/Assistant Librarian/Assistant Director of Physical Education and Sports/College DPE&S (other than an Associate Professor or Professor of a University/College/Institution, who is otherwise eligible for sabbatical leave) 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 organization and methods of education giving full plan of work.”

6. Relying upon the said provision which according to the counsel for the petitioner has a statutory force of law submitted that since the petitioner has completed three years of service in the year 2015, she should have been considered for grant of study leave in the usual course as a matter of routine, but with mala fide intentions and for victimizing the petitioner, she has been denied this benefit. Counsel for the petitioner relied upon the judgment of the Supreme Court in the case of *University of Delhi Vs. Raj Singh and others* reported in 1994 Supp (3) SCC 516 to support his contention regarding the regulations and guidelines framed by the UGC to be mandatorily followed.

7. Counsel appearing for the University, however, opposing the writ petition submits that so far as the university is concerned, it is the Leave Rules of the State Govt. which is applicable upon the staff of the university. That it is the leave Rules of the State Govt. which was applied while considering the application for grant of study leave. According to the counsel for the University, the guidelines and the regulations in respect of grant of leave can be adopted or brought into force only by the Coordination Committee of the University by approving and adopting the same. The Coordination Committee in the instant case has not yet taken a decision in this regard. Therefore, the guidelines of the UGC so far as grant of study leave is concerned cannot be acted upon and it is the Leave Rules of the State Govt. which would be governing the field. Counsel for the University further submits that the guidelines of the University also if they have to be given a statutory and mandatory force have to be first made applicable and the same can only be done by the Coordination Committee. According to the counsel for the University, the guidelines at best may be in the form of directory. He relied upon the decisions of the Supreme Court in the case of **Jagdish Prasad Sharma and others Vs. State of Bihar and others** reported in (2013) 8 SCC 633 and in the case of **Kalyani Mathivanan Vs. K. V. Jeyaraj and others** reported in (2015) 6 SCC 363. He

further relied upon the decision of this Court dated 10.12.2015 in the case of Ashish Kumar Sharma Vs. State of Chhattisgarh and others passed in WPS No. 4357 of 2015 which also reiterates and follows the decision of the Supreme Court in the case of Jagdish Prasad Sharma (supra). Thus, prayed for rejection of the appeal.

8. Having heard the rival contentions put forth on either side and on perusal of the record what is undisputed is the fact pertaining to the appointment, the application for grant of study leave, the formal approval initially on 29.07.2017 and the same day an order of recalling of the same by cancelling study leave invoking the provisions of Sub Section 5 of Section 42 of the Chhattisgarh Civil Services Leave Rules, 2010. Given the admitted facts all that we need to decide at this juncture is whether the Rules framed by the State Govt. i.e. Rules of 1977 would be governing the University or it would be the guidelines or the revised guidelines which are issued by the UGC that will be applicable.

9. The petitioner has not been able to provide sufficient material pertaining to the adoption of the guidelines of the UGC so far as grant of study leave is concerned in the university where the petitioner works. In the absence of any adoption of such guidelines proved by the petitioner, it is the Leave Rules of the State Government which would be governing the field. At this juncture, it would be relevant to refer to the Full Bench decision of the Hon'ble Supreme Court in the case of Jagdish Prasad Sharma (supra) where in paragraph-78 it has been held as under:

“78.There being no compulsion to accept and/or adopt the said Scheme, the States are free to decide as to whether the Scheme would be adopted by them or not. In our view, there can be no automatic application of the recommendations made by the Commission, without any conscious decision being taken by the State in this regard, on account of the financial implications and other consequences attached to such a decision. The case of those petitioners who have claimed that they should be given the benefit of the Scheme dehors the responsibility attached thereto, must, therefore, fail.”

Likewise, the Supreme Court again in the case of Kalyani Mathivanan (supra) in paragraph-62, after discussing various judgments on the subject matter, has laid down the following broad principles :

“62.4. the UGC Regulations, 2010 are directory for the universities, colleges and other higher educational institutions under the purview of the State legislation as the matter has been left to the State Government to adopt and implement the Scheme. Thus, the UGC Regulations, 2010 are partly mandatory and is partly directory.

62.5. The UGC Regulations, 2010 having not been adopted by the State of Tamil Nadu, the question of conflict between the State legislation and the Statutes framed under the Central legislation does not arise. Once they are adopted by the State Government, the State legislation to be amended appropriately. In such case also there shall be no conflict between the State legislation and the Central legislation.”

10. Both these judgments of the Supreme Court have been recently taken into consideration by the Coordinate Bench of this Court in WPS No. 4357/2015 where in paragraphs 22 & 23 the Co-ordinate Bench has held as under:

22. Thereafter, finally in paragraph 62.4, their Lordships have authoritatively held that the UGC Regulations, 2010 are directory for the universities, colleges and other higher educational institutions under the purview of the State legislation as the matter has been left to the State Government to adopt and implement the Scheme. Paragraphs 62.3 and 62.4 of the report state as under: -

“62.3. The UGC Regulations, 2010 are mandatory to teachers and other academic staff in all the Central universities and colleges thereunder and the institutions deemed to be universities whose maintenance expenditure is met by UGC.

62.4. The UGC Regulations, 2010 are directory for the universities, colleges and other higher educational institutions under the purview of the State legislation as the matter has been left to the State Government to adopt and implement the Scheme. Thus, the UGC Regulations, 2010 are partly mandatory and is partly directory.”

23. Thus, from the aforesaid analysis and the law laid down by Their Lordships of the Supreme Court in the matter of Kalyani Mathivanan (supra) it is quite vivid that Vice-Chancellor of the Indira Gandhi Krishi Vishwa Vidyalaya, Raipur, an agriculture university established by State Legislature, is an Officer of the University under Section 11(2) of the Act being the principal executive and academic officer of the University and it is not a teaching post. It is also evident that Regulation 7.3.0 of the UGC Regulations, 2010 is recommendatory in nature to the Agricultural University (University established by state legislation) and same

are directory in nature to the Agricultural University. The UGC Regulations, 2010 have not been shown to be adopted by the State Government and are not applicable to the Agricultural University to which 5th respondent is Vice-Chancellor.

11. Thus, this Court is of the opinion that since the guidelines of the UGC have not been adopted by the University, it is the law of the State Government which would be prevailing the field and as per the said Rules i.e. Rules of 1977, the petitioner does not seem to have got the requisite length of service for grant of study leave. The petitioner in the instant case has failed to produce any documentary proof by which it could be said that the guidelines or the revised guidelines published by the UGC from time to time more particularly regarding grant of study leave are mandatorily to be followed in the Universities recognized by the UGC when there is a specific Rule of the State Govt. which is in force governing the field.

12. In view of the same, this Court has no hesitation in reaching to the conclusion that under the Rules which are in force, the petitioner does not have a strong case calling for issuance of any writ of mandamus. So far as the judgments cited by the counsel for the petitioner are concerned, the fact of the said judgments are distinguishable on facts itself in as much as the principles of law enunciated in those judgments were on a context of appointments being made to the universities whereas in the present case, the dispute is primarily a discretionary right which is conferred upon a superior officer in the Department. Thus, there does not seem to be any relief which could be granted by this court particularly when the petitioner has admittedly not completed 5 years of service from the date of her appointment which is the minimum period prescribed under the Chhattisgarh Leave Rules 1977 for grant of study leave.

13. The writ petition thus fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE