

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 23-11-2017****Delivered on 8-12-2017****WA No. 323 of 2017**

(Arising out of order dated 19-7-2017 in WP(S) No. 3159/2017)

Guru Ghasidas Vishwavidyalaya A Central University Established by the Central Universities Act, 2009 Acting in the Premises through its Registrar, Koni Bilaspur .

---- Appellant**Versus**

Deepak Kumar Rathore S/o Shri Mevaram Rathore, aged about 32 Years Presently Posted As Assistant Professor (Electronics & Communication Engineering) at Guru Ghasidas University, Koni, Bilaspur, R/o Type III, G G U Campus, Koni, Bilaspur, District Bilaspur CG.

---- Respondent

For appellant	:	Shri B.P. Sharma, Adv.
For Respondent.	:	Shri Mateen Siddiqui, Adv.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**Hon'ble Shri Sharad Kumar Gupta, Judge****CAV JUDGMENT****Per Sharad Kumar Gupta, Judge**

1. In this writ appeal, challenge is levied to the order dated 19-7-2017 passed by learned Single Judge in WPS No. 3159/2017 whereby and whereunder he has allowed the writ petition.
2. It is admitted by the present appellant that the respondent is the Assistant Professor (Electronics and Communication Engineering). Resolution of the Committee dated 17-12-2014 was approved by the Executive Council on 27-3-2015. As per the resolution, the recommendations were subject to review after two

years. Collective papers in this regard are Annexure P-3. For the promotion from the post of Assistant Professor to Associate Professor or Professor, Ph.D. is a mandatory requirement. On the application of the respondent, the Registrar (Acting) had given No Objection Certificate to him for Ph.D. for the session – 2016-2017 vide letter dated 13-6-2016 (Annexure P-5). The respondent did not proceed for pursuing Ph.D. for the session 2016-2017. The Registrar (Acting) on 28-4-2017, vide Annexure P-7, sanctioned two years' study leave from 18-7-2017 for Ph.D. in Indian Institute of Technology, Guwahati. On 28-4-2017 the sponsoring authority Registrar (Acting) vide Annexure P-8 wrote the Director, Indian Institute of Technology, Guwahati that they are sponsoring the candidature of the respondent for Ph.D. Programme. The respondent is claiming for study leave for session 2017-2018. On 14-7-2017 vide Annexure P-1, the Registrar (Acting) issued order that the recommendations of the Committee were to be reviewed after two years from 27-3-2015 but as the review is pending, all the NOC/ orders regarding study leave sanctioned after 15-4-2017 are cancelled with immediate effect.

3. In brief, respondent's case is that on 15-12-2016 by Annexure P-6, the Academic Registrar, IIT Guwahati sent information to him that he has been selected for the academic session – January, 2017 – May, 2017 for Ph.D. Programme in the department of Electronics and Electrical Engineering. After sponsorship letter Ex. P-8, he sent e-mail on 28-4-2017 vide Annexure P-9 to the Dean, Academic Affairs of IIT Guwahati that his candidature may be considered from the session- July 2017 instead of January,

2017. It was allowed on 15-6-2017 vide Annexure P-10. Subsequently, with malafide intention, the order Annexure P-1 has been issued. The sanctioned study leave has been cancelled. The appellant failed to review the recommendations and there is no fault on the part of the respondent.

4. In brief, appellant's case is that the University has only 7 teachers in the department of Electronics and Communication Engineering including the respondent and one of the teachers is already on study leave since 2014. The respondent was suspended on 28-10-2016 and reinstated on 28-4-2017. In this regard order was passed on 24-4-2017 vide Annexure R-1. Nobody can claim study leave as a right. None of the rights of the respondent has been violated.
5. Shri B.P. Sharma, learned counsel for the appellant argued that Ex. P-1 is general in nature and not specific towards the respondent. The respondent was not entitled for study leave. The recommendations issued are under review process. Thus, the impugned order passed by learned Single Judge is contrary to the legal provisions and not sustainable.
6. Shri Mateen Siddiqui, learned counsel for the respondent submitted that the impugned order is just and proper and does not violate any provision of law hence does not call for any interference by this Court.
7. No objection certificate dated 13-6-2016 vide Annexure P-5 given by the Registrar (Acting) is prior to date 15-4-2017, meaning thereby, NOC given by Annexure P-5 was not cancelled by Annexure P-1 and at the time of Annexure P-1, Annexure P-5

was already in operation.

8. By the order Annexure P-7, two years' study leave was granted to respondent by the Registrar (Acting). By the letter dated 28-4-2017 Annexure P-8, the Registrar (Acting) had written to the Director, IIT Guwahati that the appellant is sponsoring the candidature of the respondent for Ph.D. programme. Thus, from Annexure P-7 and Annexure P-8, it is established that the appellant was agreed that the respondent may appear in academic session 2017-18.
9. At the time of issuance of Annexure P-7 and Annexure P-8, the appellant had knowledge that there is allegedly shortage of teachers in the said department, despite it, the order Annexure P-7 had been passed and he sponsored the candidature of respondent vide Annexure P-8. From Annexure P-9 and Annexure P-10, it is very clear that the respondent had applied for the permission to join Ph.D. course for the session July, 2017 instead of January, 2017 which has been approved by the IIT, Guwahati.
10. At the time of Annexure P-7 and Annexure P-8, it was in the knowledge of the appellant that aforesaid recommendations were to be reviewed, despite Annexure P-7 and Annexure P-8 have been issued.
11. Due to Annexure P-1, respondent's promotional interest has been materially affected. It has created a lot of problem to respondent regarding Ph.D. course.
12. Looking to the aforesaid facts and circumstances, we find that Annexure P-1, qua the respondent, is illegal, unjustified,

unreasonable and arbitrary. Thus, we quash Annexure P-1 qua the respondent only. It shall be applicable to concerned persons other than the respondent.

13. Looking to the above-mentioned facts and circumstances, we are agree with the impugned order Annexure P-1 passed by learned Single Judge to the above extent.

14. In the result, the appeal is partly allowed.

Sd/-
(Thottathil B. Radhakrishnan)
Judge

Sd/-
(Sharad Kumar Gupta)
Judge