

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.4246 of 2017

(Arising out of order dated 14-7-2017 of the learned Registrar, Guru Ghasidas Vishwavidyalaya, Bilaspur)

Order reserved on: 13-12-2017Order delivered on: 15-12-2017

Ganesh Prasad Shukla, S/o Ganga Prasad Shukla, aged about 33 years, Assistant Professor, Department of Industrial & Production Engineering, Guru Ghasi Das Central University, Bilaspur; R/o B-406, Harsh Ashiyana, Green Park Colony, Jarhabhatha, Bilaspur, District Bilaspur (C.G.)

---- Petitioner

Versus

Guru Ghasi Das Central University, Bilaspur, through its Registrar, Guru Ghasi Das Central University, Bilaspur, Koni, PS Koni, Tahsil Bilaspur, District Bilaspur (C.G.)

---- Respondent

For Petitioner:	Mr. Mateen Siddiqui, Advocate.
For Respondent:	Mr. Rajnish Singh Baghel, Advocate.

Hon'ble Shri Justice Sanjay K. AgrawalC.A.V. Order

1. The petitioner is Assistant Professor working in the Department of Industrial & Production Engineer in the respondent University. He applied to the competent authority for permission to get admission to undergo Ph.D. programme under 2016-17 (final admission 2017-18) as per the All India Council for Technical Education (AICTE) programme for admission under the quality Improvement programme (QIP) for teachers of engineering institution and accordingly, no objection certificate was issued in favour of the petitioner on 28-10-2015 and the petitioner was selected for pre-Ph.D. programme of IIT, Mumbai on 6-6-2016. He again applied for Ph.D. under the QIP and leave was sanctioned to him on 24-6-2016 from 4-7-2016 to 22-7-

2016 and necessary certificate was issued. The petitioner applied for second leave on 19-9-2016 which was granted by the University on 24-10-2016 from 1-11-2016 to 18-11-2016 for second visit and third leave was also sanctioned by the University authorities from 15-12-2016 to 4-1-2017. Now, on the basis of application submitted by the petitioner, IIT, Mumbai has granted permission to the petitioner on 25-7-2017 to join Spring Semester 2017-18 commencing from 1-1-2018 and accordingly, the petitioner applied for grant of leave which has been rejected by order dated 13-7-2017 stating that in the present circumstances of ongoing teaching programmes and lack of availability of teachers in the department, the request for study leave cannot be accepted feeling aggrieved against which this writ petition has been preferred.

2. Mr. Mateen Siddiqui, learned counsel appearing for the petitioner, submits that the impugned order is unsustainable and bad in law, as the petitioner's application for grant of study leave has not been considered in accordance with the minutes of meeting of the University authorities dated 17-12-2014 as in that minutes it has been resolved that 10% of the available regular faculty strength in the Department has to be granted study leave and in accordance with that, the petitioner is entitled to proceed for study leave as it is necessary for advancement of his promotional avenues and already thrice, leave has been granted to him and he has been admitted to pre-Ph.D. and the Spring Semester 2017-18 for which the petitioner has been selected is scheduled to commence from 1-1-2018. Mr. Siddiqui relied upon a decision of the Supreme Court in the matter of **Mohinder Singh Gill and another v. The Chief Election**

Commissioner New Delhi and others¹ to buttress his submission.

3. Mr. Rajnish Singh Baghel, learned counsel for the respondent, would submit that on account of current working strength of Assistant Professors in the Department, such a leave cannot be granted and a new notification dated 26th July, 2017 regulating grant of study leave for constituting School Board has already been issued, therefore, the petitioner's application deserves to be rejected.
4. I have heard learned counsel for the parties and considered their rival submissions and also gone through the material available on record with utmost circumspection.
5. A careful perusal of the order dated 13-7-2017 would show that the petitioner's application has been rejected only in light of ongoing teaching programmes and lack of availability of teachers in the department, whereas the same was required to be considered as per the minutes of meeting / recommendation dated 17-12-2014 by the appropriate committee filed along with office memo dated 15-4-2015. Entitlement of the petitioner has to be considered in accordance with the said recommendations by the competent committee, whether the petitioner falls within 10% of the available regular faculty strength in the Department or not. No such reasoned and speaking order has been passed in terms of the recommendations of the said committee. The impugned order clearly smacks complete non-application of mind and it has been rejected by a non-speaking and unreasoned order. It is correct to say that the respondent University cannot supplement the reason which they have not assigned in the order impugned while supporting the order impugned.

¹ (1978) 1 SCC 405

6. In view of that, the impugned order dated 13-7-2017 (Annexure P-30) is quashed and the matter is remitted to the competent authority of the University to consider the petitioner's application afresh for grant of study leave within seven days from 18-12-2017 strictly in accordance with law by passing a reasoned and speaking order keeping in view the applicable rules, regulations, bye-laws, ordinances and notifications of the University in this regard. The petitioner is at liberty to appear before the competent authority on 18-12-2017 and make a representation along with additional material and that will be considered and decided within seven days, as stated above, without being prejudiced by any observations made herein-above.
7. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge