

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Writ Petition No.15609 of 2017

ORDER :

The petitioner herein was appointed as a Lecturer in the School of Computer and Information Sciences in the University of Hyderabad (1st respondent) in 2007. He was later designated as Assistant Professor.

2. He intended to pursue Doctor of Philosophy programme at the School of Computing, Department of Computer Science, National University of Singapore. He therefore sought study leave from the 1st respondent-University in 2012.

3. While sanctioning his study leave, the 1st respondent imposed a condition that the petitioner should execute a bond. This bond was sought by the 1st respondent-University as per Rule 63 of the Central Civil Services (Leave) Rules, 1972 (for short, 'the Rules') which were adopted by the 1st respondent-University.

4. The said bond, executed on 17.07.2012 by the petitioner, contained a condition that he would pay a sum of Rs.19,18,000/- with interest at the rate of 6 % per annum, if he failed to complete his study within the period of study leave granted to him. Thereafter, he was granted study leave for three years from 01.07.2012 to 30.06.2015.

5. The petitioner left for Singapore in 2012, and joined in the National University of Singapore to pursue the Ph.D. programme. He was also granted fellowship initially by the National University of Singapore.

6. According to petitioner, he successfully completed eight courses therein but in December, 2013 his fellowship was stopped by the said University on the ground that he did not clear all the qualifying exam papers for pursuing the Ph.D. programme, and he was directed to continue his programme as a student in the Master of Science, incurring all expenses on his own. Petitioner contends that the said University informed the petitioner that he can resume the Ph.D. after he completes the M.Sc programme. The petitioner states that he did pursue the M.Sc. programme for six months, but thereafter due to financial reasons and ill-health of himself and his mother, he was forced to return to India on 06.06.2014 and he joined back in service on 18.08.2014.

7. On 15.10.2014, the 1st respondent-University issued a Memorandum to the petitioner stating that the petitioner had suppressed that he had earlier obtained Ph.D. provisional certificate from Utkal University in May, 2013 and also to furnish reasons for deviating from the programme of study leave at the National University of Singapore by discontinuing the Ph.D. programme therein and re-joining duties in the 1st respondent-University.

8. The petitioner replied to the same, stating that due to funding problems and health reasons he had to leave the National University of Singapore and join back in the 1st respondent-University and that he intends to pursue the Ph.D. thesis, if possible, in a University of India. He further stated that he registered for a Ph.D. Mathematics at Utkal University in 2004 before he joined in the 1st respondent-University, that he submitted thesis in August, 2011 and his Ph.D.defense was held in May, 2013.

9. On 17.06.2015, another Office Memorandum was issued by the 1st respondent –University reiterating the contents of the Office Memorandum dt.15.10.2014. The petitioner again replied to the same stating that there was no specific reason why he did not inform about his Ph.D. registration in Utkal Univeristy and that he had attended 8 courses in the National University of Singapore, but due to finance and health reasons he could not complete the course.

10. Thereafter, on 22.04.2016, a further Office Memorandum was issued by the 1st respondent-University stating that the reply of the petitioner to the Office Memoranda issued on 15.10.2014 and 17.06.2015 were not satisfactory; that he purposefully suppressed the Ph.D. registration at the Utkal University; and the Committee for sabbatical and study leave recommended that petitioner should refund the amount of leave salary, allowances and other expenses incurred by him or paid to him during the study leave period and disciplinary action as per Rules would be initiated. He was therefore asked to refund Rs.21,07,625/- within fifteen (15) days.

11. The petitioner replied to the same stating that he could not complete the Ph.D. programme in the National University of Singapore; that his fellowship therein was stopped on 24.12.2013 as he could not clear all the qualifying examination papers; that he subsequently fell sick, and therefore, returned because of his illness as well as financial hardship. He also explained that there was no column specified in the Study leave application form whether he had done Ph.D or not. He also pointed out that the Ph.D. in Utkal University was in a different subject of Mathematics and not in Computer Science. He therefore prayed that the 1st respondent-University

should consider on sympathetic and humanitarian grounds and waive all punitive measures recommended by the Study Leave Committee.

12. However, the 1st respondent passed orders on 19.10.2016 stating that as per the provisions of Rule 63 of the Rules he is required to pay Rs.22,57,158/- to the 1st respondent-University.

13. Though the petitioner sought a review of this decision by giving another representation dt.25.10.2016 to the impugned Office memorandum dt.04.04.2017, his request was not acceded to and it was reiterated that he should refund the above mentioned amount or it would be recovered from his salary at Rs.28,000/- per month from the month of April, 2017.

14. Assailing the same, the present Writ Petition is filed.

15. The counsel for petitioner contended that petitioner had sincerely pursued the Ph.D. Programme at the National University of Singapore by taking study / sabbatical leave, but on account of losing his fellowship, ill-health of himself and his mother, he was forced to return to India. He contended that if the petitioner had not at all pursued the Ph.D. programme in the National University of Singapore, there was probably some justification for the 1st respondent seeking refund of the amount of salary paid to him during the period of study leave, but since such was not the case and the petitioner had cleared 8 courses at the National University of Singapore, the 1st respondent-University was not justified in seeking refund of the amount paid as salary to him during the study leave period. He further contended that though petitioner had joined Ph.D. at the Utkal University and also submitted thesis there, the said Ph.D. was in

Mathematics and was not useful in the School of Computer and Information Sciences in the 1st respondent-University; and that was why he thought of pursuing the Ph.D. programme in the Computer Sciences in the National University of Singapore. He also contended that there was no obligation on the part of the petitioner to disclose about his submission of Ph.D. thesis in a different area of research proposed in the Study leave application form for pursuing the Ph.D. programme in Singapore. He also relied upon the decision of this Court in **Dr. K. Subramanyam Reddy v. Sri Venkateswara University, represented by the Registrar, Tirupathi and another**¹.

16. The 1st respondent-University filed a counter-affidavit refuting the contentions of the petitioner. The 1st respondent contended that on the request of the petitioner he was sanctioned study leave to pursue the Ph.D. Programme at the National University of Singapore on terms and conditions as laid down by the U.G.C. for grant of study leave; that he executed a bond to refund the amounts paid during the study leave period, if he failed to fulfill the conditions laid down therein; since he failed to complete the course of study of Ph.D., he was obligated to refund to the 1st respondent-University the sum paid to him as salary during the period of study leave at 6% interest. It is contended that once the fellowship of the petitioner was stopped by the National University of Singapore on the ground that he had not cleared all the qualifying exam papers, the petitioner should have resumed his duties at the 1st respondent-University and returned the amount he received during the period of his study leave. It is contended that the petitioner did not do so and had not acted in consonance with the conditions of study leave granted to him. It is contended that study leave to pursue a

¹ 1995 (3) ALT 386 (D.B.)

Ph.D. programme is only granted to entry level appointees such as Assistant Professors who have not cleared Ph.D. programme so as to enable them to acquire a higher qualification in their relevant discipline, and the petitioner concealed the fact that he was already awarded a Ph.D. by the Utkal University. It is stated that in view of the above circumstances, the petitioner is not only liable to refund the salary paid to him during the study leave period but is also susceptible to disciplinary action.

17. Reliance is placed on Rule 63 of the Rules in support of the right of the 1st respondent-University to recover the amounts paid as salary to the petitioner during the period of his study leave.

18. Rule 63 thereof states as under :

“63. Resignation or retirement after study leave or non-completion of the course of study :

(1) If a Government servant resigns or retires from service or otherwise quits service without returning to duty after a period of study leave or within a period of three years after such return to duty or fails to complete the course of study and is thus unable to furnish the certificates as required under sub-rule (5) of Rule 53 he shall be required to refund -

(i) the actual amount of leave salary, Study Allowance, cost of fees, traveling and other expenses, if any, incurred by the Government of India; and

(ii) the actual amount, if any, of the cost incurred by other agencies such as foreign Government, Foundations and Trusts in connection with the course of study,

together with interest thereon at rates for the time being in force on Government loans from the date of demand, before his resignation is accepted or permission to retire is granted or his quitting service otherwise :

Provided that except in the case of employees who fail to complete the course of study nothing in this rule shall apply-”

19. A reading of the above Rule shows that if a Government servant goes on study leave, and fails to complete the course of study, and is unable to furnish the certificates that he completed the course of study for which he was granted study leave, he should refund the actual amount of leave salary with interest.

20. The interpretation sought to be put by the petitioner on the said Rule that even if he failed to complete the course of study, since he attended the various courses, the said rule will not apply, cannot be accepted. This is because the Rule will operate on the failure of the employee to complete the course of study automatically. The intention behind the framing of the Rule is that the State no doubt would support an employee if he wishes to get a higher qualification abroad by granting him study leave and pay him salary from the exchequer, but he should complete the course of study for which he has taken study leave. The taxpayers’ money cannot be allowed to be wasted by a candidate who goes abroad to obtain a higher degree but who fails to complete the course of study and produces certificate of completion of the course.

21. In **Sri Venkateswara University** (1 supra), an employee had gone on study leave for a post-Doctoral position in Switzerland. While in Switzerland, he applied for extension and the Executive Council of the said University extended the appellant’s leave for one more year. He thereafter sought a further extension and it was granted for ten more months. He again requested the University to extend the study leave for one more year but the

said request was turned down by the University and he was asked to re-join the duty. Since he did not do so, an order was passed by the Vice-Chancellor terminating his services. When the petitioner questioned the same, a learned Single Judge of this court dismissed the Writ Petition on ground of delay in filing the Writ petition without going into the question whether the order passed by the Vice-Chancellor was an order of termination of service or not, and even if it is an order of termination of service whether it is valid or not, and whether the Vice-Chancellor is the competent authority to remove the lecturer from service or not. When the petitioner appealed to the Division Bench, the Division Bench allowed the Writ Appeal. The Bench held that the University cannot proceed on the premise that petitioner had been unauthorizedly absent since any such allegation cannot be accepted without compliance with principles of natural justice. It held that if the employee was not doing anything wrong in Switzerland and was not doing the job for which he was granted study leave, then it could have been different. In any event, without affording an opportunity to present his case and justify his study in Switzerland or prove his entitlement for leave, the Vice-Chancellor could not have terminated his services.

22. The petitioner herein cannot place reliance on this judgment for the facts of the said case are totally different, and unlike in the present case, the petitioner in **Sri Venkateswara University** (1 supra) was still pursuing the course in Switzerland. Admittedly, the petitioner herein did not pass the qualifying exams of the Ph.D. Programme in the National University of Singapore and the University asked him to pursue an M.Sc. Programme and after obtaining the M.Sc. degree then pursue the Ph.D. Programme. The

petitioner herein therefore *failed to complete the course of study* of Ph.D. programme at the National University of Singapore for which he was granted study leave and, is therefore, liable under Rule 63 of the Rules to refund the amount of salary paid to him with interest.

23. I therefore see no merit in the Writ Petition, and it is accordingly dismissed. No order as to costs.

24. As a sequel, miscellaneous applications pending if any, in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11.07.2017

Ndr/*

