

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1003 of 2017 (O&M)

Date of Decision: 02.06.2017

Nadeem Younus Zargar

... Appellant

VS.

Coal India Ltd. & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE HARI PAL VERMA

Present: Mr. PK Goklaney, Advocate for the appellant

SURYA KANT, J. (Oral)

(1) The appellant is working as Assistant Manager (HR/P) in Coal India Ltd. On his posting in Chandigarh, he joined w.e.f. 07.12.2012. The appellant vide order dated 11.04.2016 was ordered to be transferred from Chandigarh to Kolkata. He challenged the said transfer order primarily on the ground that he has got himself enrolled for Ph.D. Programme in Business Management with Chandigarh University at Mohali (a private university) since August, 2015 and is half way through the Ph.D. Degree Course.

(2) The respondents took a categoric stand before the learned Single Judge that the appellant neither sought prior permission for joining the Ph.D. Programme nor any study leave was sanctioned. It was further maintained that the transfer order was issued as per exigencies of the administration and without any punitive motive. In the light of such explanation, learned Single Judge has dismissed the writ petition, giving rise to this intra-court appeal.

(3) It is contended before us that the appellant has already applied for study leave on 04.08.2015 (P2). Such a request is still under consideration as no order rejecting or accepting the same has been passed. Reference is made to the decision taken by the Board of Directors of the respondents regarding 'study

period but has not completed five years' service. It is averred that the appellant fulfills such eligibility condition.

(4) Having heard learned counsel for the appellant, we are of the considered view that the transfer being an incidence of service, no interference by this Court is called for. The question whether Ph.D. Programme joined by the appellant would benefit or will improve the quality of services is essentially a question to be considered by the authorities in the Coal India Ltd. The appropriate recourse for the appellant would be to represent the competent authority for sympathetic re-consideration of the transfer order and allow him to remain posted at Chandigarh for the limited duration till completion of the Ph.D. Programme. If the appellant gives an undertaking and is able to convince the authorities that as soon as his Ph.D. programme is over, he may be transferred anywhere throughout the country, we are sure that the competent authority will dispassionately re-consider the whole issue and see the desirability of his retention in Chandigarh to enable him to complete the Ph.D. Programme.

(5) Consequently and in the light of the above observations, we decline to interfere with the order passed by learned Single Judge but dispose of the appeal with liberty to the appellant to submit a comprehensive representation seeking (i) *ex post facto* sanction for study leave; (ii) his retention at Chandigarh for a limited period for completion of Ph.D. Programme; (iii) give an undertaking that he may be transferred out to any place throughout the country after completion of Ph.D. If such representation is submitted by the appellant within one week, we have no reason to doubt that the respondent-authorities, regardless of the fact that the writ petition has been dismissed, shall re-consider the matter sympathetically and objectively.

(6) Let an appropriate decision on the appellant’s representation be taken as early as possible and preferably within three weeks.

(7) Ordered accordingly.

(Surya Kant)
Judge

02.06.2017
vishal shonkar

(Hari Pal Verma)
Judge

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| 1. <i>Whether speaking/reasoned?</i> | Yes/No |
| 2. <i>Whether reportable?</i> | Yes/No |