

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5908 of 2018****Reserved on 25/10/2018****Delivered on 16/11/2018**

Leeladhar Rajput S/o Dukhee Ram Rajput, aged about 32 years, Assistant Professor, Department of Industrial & Production Engineering, at Guru Ghasi Das Central University, Bilaspur, R/o Near Shiv Mandir, Ganga Nagar, Phase-II, Mangla Chowk, Bilaspur, District Bilaspur (C.G.).

---Petitioner**Versus**

1. Guru Ghasidas Central University, Bilaspur, Through its Registrar, Koni, PS Koni, Tahsil Bilaspur, District Bilaspur (C.G.).
2. School Board, Through its Chairman, Guru Ghasidas Central University, Bilaspur, Koni, PS Koni, Tahsil Bilaspur, District Bilaspur (C.G.).

---Respondents

For petitioner	:	Shri Mateen Siddiqui, Advocate.
For respondents	:	Shri Ashish Shrivastava, Advocate.

Hon'ble Shri Justice P. Sam Koshy**CAV ORDER**

1. The issue involved in the instant case is the non-granting of study leave to the petitioner and non-relieving of the petitioner for 60 days leave for participating in the Pre-Ph.D. contact program under the advance admission scheme.
2. The relevant facts for adjudication of the case is that, the petitioner in the instant case is working as an Assistant Professor in the department of Industrial and Production Engineering under the respondents.

3. The petitioner applied for undergoing the Ph.D program. The petitioner had applied through the proper channel after due permission of the Registrar of the respondent No.1 – University and on obtaining No Objection Certificate, the petitioner applied for the same.
4. The petitioner was found selected for Ph.D. course for the year 2017-2018 and the petitioner's name finds place for undertaking Ph.D. course from IIT, Kharagpur.
5. The petitioner was intimated by the Co-ordinator, QIP center, IIT Kharagpur vide letter dated 30/05/2017 for visiting Kharagpur for completion of the first face of 60 days Pre-Ph.D contact program.
6. Though, initially, the respondent No.1 had granted NOC, but subsequently, the request for leave to pursue Ph.D. program was rejected earlier vide order dated 14/07/2017 and later by other order dated 16/03/2018 – Annexure-P/1 which is under challenge in the present Writ Petition.
7. According to the petitioner, for the next promotional post i.e. the post of Professor it is required that the petitioner has a Ph.D. degree. The All India Council for Technical Education (AICTE) also have floated the scheme under the quality improvement program for Teachers in the University undertaking Ph.D. degree while in service and for which necessary study leave should be granted by the concerned University.

8. According to the petitioner, though, initially the date which was provided by the IIT, Kharagpur have already lapsed, however the petitioner had again approached the IIT, Kharagpur and they vide Annexure-P/5 dated 27/07/2018 have granted extension for the Pre-Ph.D. contact program for dilution of 60 days and which would be concluded by 31/12/2018. Thus there is still sufficient days left if he is relieved for participating in 60 days Pre-Ph.D. program.
9. The contention of the counsel for the petitioner is that, the issue involved in the case stands squarely covered by the judgment passed by this Court in the case of Deepak Kumar Rathore v. Guru Ghasidas Vishwavidyalay Central University, Bilaspur [WPS No. 3159 of 2017] so also by the judgment passed in the case of Ganesh Prasad Shukla v. Guru Ghasidas Vishwavidyalay Central University, Bilaspur [WPS No. 92 of 2018].
10. According to the petitioner, the rejection of the study leave of the petitioner by the respondents is bad in law for the reason that it is contrary to the rules and guidelines or the scheme for grant of study leave applicable in the department.
11. The respondents on the contrary opposing the petition submits that, the petitioner would not be entitled for the same for the reason that, in the same department in which the petitioner is performing his duties, another Assistant Professor has already been sent on study leave and under the scheme from the available strength not more than 10% of the faculty members could be considered for grant of study leave and since 10% already stands exhausted by granting

study leave for Shri Ganesh Prasad Shukla, the petitioner's claim cannot be considered again.

12. So far as the judgment of Deepak Kumar Rathore (Supra) is concerned, the view of the counsel for the University is that, in an appeal, the division Bench of this Court has already diluted the order so far as this Court is concerned and the relief granted has been confined to the petitioner therein and so far as the respondent is concerned, the division Bench has held that the said finding so far as the University is concerned to be unjustified and illegal.
13. It was also the contention of the respondents that, another faculty member Shri Atul Kumar Sahu was also granted study leave from the same department in the year 2016. Apart from this, the respondents has also raised other grounds like delay on part of the petitioner in claiming for the relief from this Court and also the fact that immediately on his services getting regularized within 3 months time, the petitioner has applied for leave.
14. It was also contended by the counsel for the respondents that, it is the need of the student which has to be given paramount importance and for the interest of students it is required that there should be sufficient faculty members present in the University for catering the need of the students. Taking note of all these factors if the University have rejected or refused to grant study leave to the petitioner, the same cannot be said to be bad in law, arbitrary or illegal and for these reasons the Writ Petition was sought to be dismissed.

15. Having heard the contentions put forth on either side what is reflected is that the core issue being that of, whether the petitioner in the given factual scenario is entitled for study leave or not? Or in other words, whether it was justified on the part of the respondents in refusing the petitioner study leave for his Ph.D course.
16. From the contentions which have been made by the counsel appearing for the respondents, what primarily culls out from his submissions was that it was not the case of the respondents that they did not intend to send the Assistant Professors on study leave. The stand of the respondents primarily was that since the study leave should be granted only to such number of teachers which should not exceed 10 percent of the available regular faculty strength and since two of their officers namely Atul Kumar Sahu at the first instance and subsequently Ganesh Prasad Shukla were already sent on study leave, total strength of the available regular faculty would get disturbed and granting study leave to the petitioner would exceed 10 percent permissible limit.
17. Given the aforesaid situation, this court feels that if we decide this issue whether granting study leave to the petitioner would amount to exceeding the permissible limit of 10 percent would be more relevant and in case if it exceeds more than 10 percent, then the stand of the respondents would be justified and thereafter this court may not be required to go into the other objections which have been raised by the respondents counsel. This proposition would also be acceptable to the petitioner for the reason that the petitioner

himself was of the view that if the petitioner is granted study leave it shall not cross the limit of 10 percent of the available faculty strength. Infact the argument of the petitioner was that the university people are wrongly calculating to show that it crosses 10 percent margin by giving a wrong interpretation to the recommendations made by the university so far as grant of study leave is concerned.

18. Accordingly, we proceed to decide whether grant of study leave to the petitioner would amount to crossing of 10 percent limit or not.
19. At this juncture it would be relevant to take note of the recommendations made by the committee constituted in this regard which had deliberated upon the guidelines laid down by the AICTE as also that by the UGC. The relevant portion of the recommendations made are as under:

***“2. The application shall be processed for such faculty members who has satisfactorily completed his/her regular continuous service in the university (GGV), including the period of probation, for not less than four years in case for applying for study leave, and three years in case for applying for QIP leave. This is so because a candidate under QIP has to take advance admission in Ph.D programme for which he/she receives admission to the pre-Ph.D programme during the same session of application, if selected and on successful completion of this Pre- Ph.D programme, the candidate is offered admission to the regular Ph.D programme during the next academic session.*”**

3. Grant of study leave (including QIP leave) shall be subject to overall filled up faculty position in the concerned department. In each academic session, at the time of processing of application, the number of teachers considered for granting the study leave (including QIP leave) shall not exceed 10% of the available regular faculty strength in the department. Any fraction in this figure equal to or greater than 0.5 , thus arrived at being rounded off to the next higher integer.

(For example, in a department if, available regular faculty strength =5, 10% of 5=0.50; which is rounded off to an integer i.e. 1.0., that means, total regular faculty members that can be granted the study leave (including QIP leave) in an academic session of the department shall be 1.0).

20. As has been discussed in the preceding paragraphs, the petitioner is an associate Professor working in the Industrial and Production Engineering Department under the respondents. Plain reading of aforesaid provisions of the recommendations would reveal that the petitioner otherwise has all the eligibility criteria for applying for obtaining study leave. The sole criteria left under the circumstances is to check whether granting study leave to the petitioner would amount to crossing 10 percent limit of available regular faculty strength.
21. The committee's stand was very emphatic when it recommended that at the time of processing the application of the teachers who had applied for parting in the Ph.d degree including the number of teachers to be considered for granting study leave should not

exceed 10 percent of the available regular faculty strength. The strength of the Assistant Professors in the Industrial and Production Engineering Department is 18. However, 10 posts of the Assistant Professors are lying vacant since long and the available total strength of the faculty in the department was 8. 10 percent of 8 would be 0.8 and for all practical purposes it can be rounded off as 1. That means, from the available total strength of 8, one person can be sent at a time for Ph.D course by way of study leave.

22. This is the stand which is also taken by the University. According to the University two persons namely Atul Kumar Sahu and subsequently Ganesh Prasad Shukla have already been sent on study leave. According to the respondents, when the claim of the petitioner was being considered, the said Atul Kumar was already on study leave. Subsequently, on the intervention of this High Court in WPS No. 92 of 2018 Ganesh Prasad Shukla was also granted study leave as per the order of this court in the aforesaid writ petition.

23. Therefore, at one point of time two persons from the available strength of 8 were on study leave and in the event if the petitioner also is permitted, it would substantially reduce the total strength of faculty members and it can also have an adverse bearing on the education of the students in the Industrial and Production Engineering Department. Whereas, the contention of the petitioner was that the term used by the committee while making recommendation for study leave was 10 percent of the available

regular faculty members which means 10 percent of actual strength in the university on the date when the claim for study leave is being considered.

24. In other words, according to the petitioner, even if somebody is already sent for study leave what has to be taken note of is the 10 percent of the balance of available teaching staff in the department i.e. to say in a case like in the present one Atul Kumar Sahu and Ganesh Prasad Shukla both having been sent on study leave from the total strength of 8 the balance available teaching force would be 6 and it is 10 percent of this 6 which has to be considered 10 percent of this would be 0.6 and which for all practical purposes would be rounded off as 1. According to the petitioner, the term available has to be interpreted in a manner by which it has to be presumed that “available” means the actual available faculty members in the establishment and not the total manpower available. This in the opinion of this court is neither logical or sustainable.
25. The context in which the term available has been referred to, in the opinion of this court would mean the actual total number of teachers working in the department. It does not mean the total available strength on the date of consideration.
26. The contention of the respondents university seems to have more logic and makes more sense for the reason that the object behind putting 10 percent cap is to ensure that on the given academic session the minimum number of faculty members are available in

the university or else the interest of the students would get hampered or adversely affected. If the analogy which has been propounded by the petitioner is to be accepted then it can lead to a situation where out of total available strength of 8-9 till the number of faculty member gets reduced till 5, the university would have to grant study leave to its faculty members. This can bring down the total available strength of regular faculty members to less than 50 percent of the total working strength which does not seem to be the mandate or the purpose that was meant. From the available regular faculty strength, the maximum number of teachers who could be considered for grant of study leave was not to exceed 10 percent of the available strength which would be also inclusive of all those persons who are already on study leave as they also, for all practical purposes are treated against the filled up post in the university and their posts cannot be said to be one which is lying vacant. Thus, they would also have to be treated as part of the available strength.

27. It would be relevant at this juncture to refer to the observations made by the Division Bench of this court in Writ Appeal No.101 of 2018 in case of Ganesh Prasad Shukla Vs. Guru Ghasidas Central University, Bilaspur & Ors. whereby the Division Bench has set aside the order of Single Bench dismissing the writ petition of Ganesh Prasad Shukla so far as dealing with the subject of available regular faculty in paragraphs 17 and 18 as under:

“17. It appears the University has wrongly construed the criteria laid down by the committee on 15-4-2015 (Annexure – P/4), which provides that in each academic session, at the time of processing of application, the number of teachers considered for granting the study leave (including QIP leave) shall not exceed 10% of the available regular faculty strength in the department and further that any fraction in this figure equal to or greater than 0.5, thus arrived at will be rounded off to next higher integer.

18. By way of illustration, it is mentioned in the norms itself that if in a department available regular faculty strength is 5, 10% of 5 = 0.50, which is rounded off to an integer i.e. 1.0, that means, total regular faculty members that can be granted the study leave (including QIP leave) in an academic session of the department shall be 1.0. Therefore, since, as per Annexure – P/1 the available faculty strength was 8, applying the University's own illustration, 10% of 8 would be 0.80 which is required to be rounded off to the next higher integer i.e. 1.0 and 1 faculty can be allowed study leave in the academic session 2017-18 for which the petitioner had applied.”

28. Bare reading of the aforesaid observations particularly the objections made in paragraph 18, the Division Bench has clearly stipulated that out of the available faculty strength of 8, 10 percent would be 0.8 which has to be rounded off as 1 and it was observed that one faculty there could be allowed for study leave.

29. What is pertinent to take note of at this juncture is that, in the light of the aforesaid judgment of the Division Bench in case of Ganesh Prasad (Supra) is that, the university authorities have granted study leave to said Ganesh Prasad and who has already proceeded and who is undergoing his Ph.D course. That, once when Ganesh Prasad has been granted study leave, 10 percent quota who could be considered for Ph.D gets exceeded and therefore the respondents had rejected the claim of the petitioner. Like earlier mentioned if the analogy and the contentions which the petitioner tried to emphasize is to be accepted it can lead to cascading effect on the educational system as also the institution and above all the academic career of the students undergoing the different course in the said department. The university cannot as a matter of routine grant study leave to all those persons who applies. It also has to take into consideration the future of the students, the quality of education which is being imparted and the minimum standard which is required for the smooth functioning of the institution and for the maintenance of the minimum standard which are prescribed by the AICTE as also by the UGC.
30. On the contentions made by the respondents it appears that out of total sanctioned strength of 18, the available faculty strength is 8 which by itself would depict that the said department is being managed with about 45 percent of its sanctioned strength of which also if one person is further sent on or granted study leave, the percentage of available faculty further reduced to around 38 percent which can never be said to be healthy situation so far as

the educational institution is concerned whose primary object and aim is to impart better quality education to each of the students in the respective department in the university. Yet the department has already sent Ganesh Prasad Shukla on study leave and one Shri Atul Kumar Sahu was also granted study leave both of whom are members of the available strength of 8, though Atul Kumar Sahu has now returned back but on the date of consideration of the petitioner both these persons were on study leave.

31. In case of Director (Studies) Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh and Others Vs. Vaibhav Singh Chauhan, 2009(1)SCC 59, the Supreme Court has held as under :

“27. Before parting with this case, we would like to refer to the decisions of this Court which has repeatedly held that the High Court should not ordinarily interfere with the orders passed in educational matters by domestic tribunals set up by educational institutions vide Board of High School & Intermediate Education, U.P. Allahabad & another vs. Bagleshwar Prasad & another AIR 1966 SC 875 (vide para 12), Dr. J.P. Kulshrestha & others vs. Chancellor, Allahabad University & others AIR 1980 SC 2141 (vide para 17), Rajendra Prasad Mathur vs. Karnataka University & another AIR 1986 SC 1448 (vide para 7). We wish to reiterate the view taken in the above decisions, and further state that the High Courts should not ordinarily interfere with the functioning and order of the educational authorities unless there is clear violation of some statutory rule

or legal principle. Also, there must be strict purity in the examinations of educational institutions and no sympathy or leniency should be shown to candidates who resort to unfair means in the examinations.”

32. Given the said facts, this court is of the view that the refusal to grant study leave to the petitioner cannot be said to be in any manner perverse or contrary to their guidelines or the earlier recommendations granted for the grant of study leave is concerned. Neither can it held to be either arbitrary or malafide.
33. The writ petition accordingly fails and is thereby dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved