

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 121 of 2019

(Aggrieved by the Order dated 16.11.2018 passed in WPS-5908 of 2018)

- Leeladhar Rajput S/o Dukhee Ram Rajput Aged About 32 Years Assistant Professor Department Of Industrial And Production Engineering , at Guru Ghasi Das Central University Bilaspur, R/o Near Shiv Mandir Ganga Nagar ,Phase II, Mangla Chowk, Bilaspur District Chhattisgarh

---- Appellant

Versus

1. Guru Ghasidas Central University Through Its Registrar, Koni Police Station Koni, tahsil Bilaspur District Bilaspur Chhattisgarh
2. School Board Through Its Chairman Guru Ghasidas Central University Bilaspur Koni, Police Station Koni, tahsil Bilaspur District Bilaspur Chhattisgarh

-----Respondents

For Appellant : Shri Mateen Siddiqui, Advocate
For Respondents : Shri Ashish Shrivastava, Advocate

**Hon'ble Shri Ajay Kumar Tripathi, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board**

Per Ajay Kumar Tripathi, Chief Justice

20.02.2019

1. Writ Application came to be filed by the present appellant against Guru Ghasidas Central University, Bilaspur (for short,'the University') when they refused to grant him study leave as well as to relieve him to pursue his pre-PhD contact programme under the Advance Admission Scheme. The learned Single Judge keeping in mind the relevant guidelines and rules relating to grant of study leave, examined the claim of the appellant and dismissed the Writ Application on 16.11.2018, therefore, the appeal.
2. The appellant is working as an Assistant Professor in the department of Industrial and Production Engineering in what is known as Guru Ghasidas

Central University, Bilaspur. He applied for undergoing a PhD programme through proper channel and permission was granted by the University after obtaining a 'No Objection Certificate'.

3. The appellant qualified for pursuing his PhD for the year 2017-18 in Indian Institute of Technology, Kharagpur. After the confirmation from the IIT Kharagpur, he applied for leave but the same was rejected. He gave yet another application on 16.03.2018 which too was rejected and therefore, a Writ Application was filed.

4. Shorn of all other details, the issue is whether the University is being arbitrary or irrational in refusing to grant permission as well as leave to the present appellant to pursue his higher studies, which is anyway required to be done in terms of the scheme formulated by the University Grants Commission (for short, 'UGC').

5. The learned Single Judge has reproduced the requirements which the UGC itself has laid down in its recommendation for grant of leave in paragraph-19 of the impugned order. The same is reproduced herein below:

"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)"

6. After taking note of the above provision and guidelines what is required to be seen is whether the petitioner/appellant could be granted study leave keeping in mind the faculty position or the actual working strength in the department.

7. The admitted position is that there are only 8 teachers in the department out of which one teacher Shri Ganesh Prasad Shukla is already on study leave and if the formula of allowing only 10% of the working strength of the department is taken into consideration, there is no scope for allowing a second teacher on the limited strength who is working in the department.

8. Primary reason why a cap of 10% has been put is to ensure that the studies of the students do not suffer and leave is not granted to teachers indiscriminately at the cost of education of the students.

9. Though an effort was made on behalf of counsel for the appellant to draw analogy from the case of Atul Kumar Sahu and Ganesh Prasad Shukla, but we are not satisfied or convinced that there is similarity between the two cases. The writ Court had earlier allowed Ganesh Prasad Shukla to go for study leave keeping in mind that Atul Kumar Sahu was about to return to the University within a couple of months.

10. In the present case, Ganesh Prasad Shukla has been sent on study leave in the year 2018 and he is to return back to the University in the year 2020 meaning thereby that the 10% formula and the cap shall come in the way of a second teacher being permitted to go for study leave, till such time, the present strength of the faculty does not increase to double digits and 10% adds up to double digits or till such time Ganesh Prasad Shukla returns to the department either on completion of his higher studies or even earlier for reasons best known to him.

11. The reasons and the views so taken by the learned Single Judge in the given facts and guidelines may not be said to be an erroneous view to take. We too have tried to analyse the situation objectively and we have come to a conclusion that the appellant can only be permitted to go for higher studies by grant of study leave by giving a complete go by to the guidelines and the cap of 10% of the working strength of the faculty, which we do not want to do as a Court cannot be seen to be in breach of the settled guidelines governing such decision.

12. We do not find any infirmity with the order of the learned Single Judge. Accordingly, the appeal is dismissed. However, the claim of the petitioner/appellant for grant of study leave will be considered by the University under the circumstances that the strength of the faculty members get enhanced

to such a level where the 10% will facilitate, more than one teacher to go simultaneously for higher studies or when Ganesh Prasad Shukla returns to the University and starts working as one of the faculty members in the department.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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