

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 33349 OF 2013

AND

M.P. NOS. 2 & 3 OF 2013

Dr. P.Arunkumar

.. Petitioner

- Vs -

1. The Board of Governors
rep. By its Chairman
National Institute of Technical
Teachers Training Institute
Tharamani, Chennai - 113.

2. The Director
National Institute of Technical
Teachers Training Institute
Tharamani, Chennai - 113.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the 2nd respondent's proceedings made in Ref. Estt./NITTTR/PAK/Leave/2013-14/1205 dated 11.11.2013, quash the same and consequently direct the respondents to accord sanction of Sabbatical leave as sought for by the petitioner and to extend all benefits both service and monetary arising thereto forthwith by regulating the period.

For Petitioner : Mr. L.Chandrakumar

For Respondents: No Appearance

ORDER

The present petition has been presented before this Court praying for a direction to the respondents to grant sabbatical leave and also to regulate the period of absence of the petitioner.

2. It is the case of the petitioner that he is working as Professor and Senior Head in the respondent Institute. In and by application dated 17.4.13, the petitioner sought for sabbatical leave for consolidating the experiences of Technical Education for the welfare of the institution. The sabbatical

leave was sought by the petitioner immediately succeeding the earned leave application dated 21.1.13. The petitioner had further followed up on the above leave application with a reminder dated 5.6.13 in which the petitioner had reiterated the leave sought for as he was advised certain medical attention. It is the case of the petitioner that Rule 7.1.17 of the Statutory Leave Rules provides for the said leave, wherein certain guidelines have also been prescribed for grant of the said leave. It is further averred by the petitioner that there was no whisper from the respondents, which prompted the petitioner to address the 1st respondent on 6.9.13. However, the said letter, instead of being considered in the right spirit, was rejected on the ground that the grant of sabbatical leave involves lengthy procedure and requires the approval of the Board of Governors and, hence, the question of grant of sabbatical leave was rejected and the petitioner was directed to report for duty and the petitioner was called upon to show cause why the action should not be taken against him for unauthorised absence. However, the petitioner, vide his explanation dated 27.9.13, once again reiterated his request and prayed for dropping of all further action. However, by way of a totally non-speaking order, the request of the petitioner was rejected and further the petitioner was directed to rejoin duty within five days else the period between 8.4.13 till the date of joining of the petitioner in duty will be treated as 'dies non', which is nothing but break in service. It is the case of the petitioner that the said order passed by the respondents is without following the well established principles relating to grant of sabbatical leave and left with no other alternative, the petitioner has approached this Court by filing the present petition.

3. Learned counsel appearing for the petitioner, drawing the attention of this Court to Rule 7.1.17 submitted that the petitioner is entitled to grant of sabbatical leave, which not only is in the interest of the petitioner, but more in the interest of the institution, as the sharpening of skills of the petitioner in turn is for the benefit of the institution. It is the further contention of the learned counsel for the petitioner that without considering the reason for the utility of the sabbatical leave, the respondents not only rejected his request for leave, but has in turn, without granting any opportunity to the petitioner, taken action against the petitioner by treating the period as break in service, which is wholly against the principles of natural justice. It is the further contention of the learned counsel for the petitioner that the import of the whole order reveals that the respondents were not at all intent upon considering the request of the petitioner for grant of sabbatical leave and the further action of treating the period of absence as break in service without following the due

procedure prescribed by law by framing charges is nothing but implicating and finding the petitioner guilty without any trial. Therefore, it is submitted that this Court not only quash the impugned order, but further direct the respondents to grant sabbatical leave to the petitioner and also to direct regulating the period of absence as service.

4. Though notice has been served on the respondents way back in December, 2013 and the name of the counsel appears in the cause list, however, when the case is taken up, there is no representation for the respondents. However, in view of the fact that the matter pertains to the year 2013 and more than seven years have passed since the institution of the petition and the matter in issue pertains only to non-grant of leave, this Court proceeds to analyse the materials available on record on merits.

5. The facts in issue as also the dates are not in dispute. Therefore, this Court is not dwelling much into the same, except to a certain extent where relevancy of dates matter. The main thrust of the argument of the petitioner centres on Rule 7.1.17, pertaining to grant of sabbatical leave and for better appreciation of the matter, the same is extracted hereunder :-

"7.1.17 Sabbatical Leave :

i. The Sabbatical Leave is a special facility to the academic staff members in order to enable them to update their knowledge and experience so that they will be of greater use to the Institute on their rejoining. It should be applied 4 months in advance to the BOG through proper channel.

ii) Sabbatical Leave shall be admissible to a permanent member of the academic staff:-

a) After the completion of 6 years of continuous service, or more in the Institute,

b) Where he/she avails of Special Leave, after the completion of 6 years service or more in the Institute after his/her return from such Special leave,

c) The continuous service will commence from the date of joining the Institute or from the date of rejoining on return from Sabbatical Leave/Special Leave /EOL without leave salary except EOL granted on medical grounds,

d) In any case, sabbatical leave shall not exceed three times (inclusive of Special Leave in case such leave has been granted) during the entire service of such a member.

iii) Sabbatical Leave may be granted for one or more of the following purposes, namely:-

a) to conduct research or advanced studies in India/abroad;

b) to write text books, standard works and other literature;

c) to visit or work in industrial concerns and technical departments of Government to gain practical experience in their respective fields;

d) to visit or work in a University, Industry or Government research laboratory in India and Abroad; and

e) any other purposes for the academic development of the staff as approved by the Board.

iv) The grant of Sabbatical Leave shall be subject to the following conditions, namely:-

a) the period of Sabbatical Leave shall not exceed one year at a time inclusive of vacations, if any but the Board may grant in addition any other leave upto a maximum of 120 days which the staff might have earned during the service at the Institute;

b) Academic staff shall, during the period of Sabbatical Leave, be paid full salary and allowances as admissible under the normal rules but he/she shall not be entitled to any traveling allowance or any extra allowance in India or Abroad;

c) No substitute shall be appointed in the vacancy and his/her work shall be shared by the other members of the faculty.

d) Academic staff shall not undertake during the period of Sabbatical Leave, any regular appointment under any other organization in India or abroad. He/She shall, however, be free to receive a scholarship or fellowship or bursary or any other adhoc honorarium other than regular employment;

e) Academic staff availing himself /herself of sabbatical leave shall furnish a bond in the prescribed form to serve the Institute for a minimum period of 3 years on return to duty and it is reduced to 2 years in cases where the staff member is unable to serve the Institute for a period of 3 years on the expiry of Sabbatical Leave due to superannuation.

v) Sabbatical Leave shall not be granted for less than 6 months at a time and splitting of Sabbatical Leave is not permissible and cannot be utilized in parts.

vi) If the leave availed of is less than the maximum permissible period, it would still be presumed that the opportunity has been fully utilised and the eligibility criteria would apply afresh from the date of reporting back from such leave.

vii) The faculty member shall specify the places he proposes to visit, the nature of work he proposes to do and how this would contribute to his academic development.

viii) While recommending the leave, the Head of the Department /Centre has to certify that alternative arrangements have been made for sharing of the academic, research and project activities and other departmental duties and commitments of the staff member concerned during his absence.

ix) A staff member having a long term project may request for permission to avail himself of Sabbatical Leave only after completion of one year from the commencement of a project and only if a co-investigator as approved by the funding agency is available to take care of the project.

x) At any point of time, in a Department a maximum of 15% of the sanctioned strength of the academic staff members of the Department (subject to any fraction in the figure thus arrived at being rounded off to the next higher integer) may be permitted to avail of long leave either within India or abroad. No substitute will be appointed in the vacancy and the other members of the Faculty will share the work. This 15% rule will not apply in the case of staff members who are 55 or more years old.

xi) No other type of leave except leave at credit EL/HPL up to a maximum of 120 days will be permitted as an extension of Sabbatical Leave.

xii) A staff member who does not have the required period of service in the Institute on his return, may, however, be eligible for leave at credit such as EL and HPL for visit abroad to accept academic responsibilities.

The Board may constitute a sub committee as Standing Committee to look into the proposals received from the faculty/scientific staff for

sabbatical leave and EOL (Long Leave) to recommend to the Board for further consideration and approval.

* * * * *

6. A perusal of the above rules reveal that a faculty member, availing sabbatical leave should apply for the said leave four months in advance of the date on which he intends to avail sabbatical leave and it should be sent through proper channel to the Board of Governors for their approval and sanction.

7. A perusal of the materials available on record reveals that the petitioner had been on sanctioned earned leave from 11.2.13 to 5.4.13 for a period of 54 days. The petitioner has submitted his application for availing sabbatical leave on 20.04.13 with intention to go on sabbatical leave from 1.5.13 to 30.4.14, i.e., for a period of one year. According to the respondents, between 5.4.13 and 20.4.13, an application was submitted by the petitioner for any type of leave, which is nothing but unauthorised absence. Further, the gap between the date of application submitted by the petitioner and the date on which the petitioner intends to go on sabbatical leave is only 10 days. First of all, from the above provision for availment of sabbatical leave, it is unambiguously clear that application for sabbatical leave has to be submitted four months in advance of the date from when the person intends to go on sabbatical leave. Though it is the submission of the learned counsel for the petitioner that even though the petitioner had given notice of only ten days to go on sabbatical leave, however, it is open to the Board of Governors to grant leave from a later date for a period of one year, for which there is no embargo. However, without any rhyme or reason, the sabbatical leave applied for by the petitioner has been rejected by the respondents, which is wholly unsustainable.

8. In this regard, the introductory portion to the leave rules, on which reliance is placed would be an apt reference. At 7.1.1, the introductory clause, it is found as under :-

"Leave is a provision to stay away from work for genuine reasons with prior approval of the authorities. It may be granted for a casual purpose or a planned activity, on medical grounds or in an extra-ordinary condition.

Leave cannot be claimed as a matter of right. Accordingly, leave rules and norms have been categorized under various heads. Vacation and leave are governed by a set of rules and norms as laid down by the Government of India. The following leave rules and norms give details

about the different types of leave and how they can be availed of."

(Emphasis supplied)

9. Even from the above introduction it is evident that it has been made plain that leave cannot be claimed as a matter of right. The above is not restricted to any particular type of leave, but any type of leave. Equally sabbatical leave is governed under the said head. In this backdrop, the norms fixed for availment of sabbatical leave is that the person intending to avail the said leave should submit his application for sabbatical leave four months in advance of the date from which he intends to go on leave and the same should be submitted through proper channel to the Board of Governors for approval. Further, it goes without saying that approval of the Board of Governors is a necessity for the said person to avail sabbatical leave and that approval is not a matter of course.

10. In addition to the above provision, which is crucial, one other crucial provision which governs the sabbatical leave is found in clause (vii) of Rule 7.1.17. For better clarity, the same is extracted hereunder :-

"vii. The faculty member shall specify the places he proposes to visit, the nature of work he proposes to do and how this would contribute to his academic development."

11. The above provision clearly prescribes that the person, who intends to avail sabbatical leave has to specify the places he proposes to visit, the nature of work he proposes to do and the way in which the same would contribute to his academic development. In this regard, the application submitted by the petitioner assumes importance, vis-a-vis, the rejection of sabbatical leave by the Board of Governors. The letter of the petitioner proceeds as under :-

"With reference to the above subject and in resonance with the privileges of faculty of National Institutes under the Ministry of Human Resources Development, I request you to permit me to avail sabbatical leave for one year from May 1, 2013 to April, 2014. During this period, I propose to consolidate my experiences in the field of Technical Education after having served four southern states in various capacities. The output of my work will serve the learning community at large comprising of parents, teachers and learners (from parenting an infant to creating a conducive environment for research at different higher education levels)."

12. From a careful reading of the above provisions coupled with the letter of the petitioner, it is evident that the requirement as envisaged in clause (vii) of Rule 7.1.17 does not seem to have been fulfilled. Though the petitioner, in the above said letter, has highlighted the output which he proposes to achieve, however, the letter is silent on the nature of work he proposes to do and how this would contribute to his academic development. The letter merely proceeds to state that his work will serve the learning community at large comprising of parents, teachers and learners from parenting an infant to creating a conducive environment for research at different higher levels of education, which is only a very broad and vague outline and it does not in any way give the intricacies of the type of work that the petitioner proposes to achieve through his studies, which would in turn benefit the institution. Further, it also does not in any way highlight about the way in which this would contribute to the academic development.

13. In the above backdrop, the letter of the respondents dated 13th Sept., 2013 assumes significance. In the said letter, the 2nd respondent has not only highlighted the lengthy process that is to be undertaken to get approval for sabbatical leave, the said letter also highlights the various acts which have been done by the petitioner without obtaining prior approval of the Board of Governors. The main reason for the provision of submission of application for sabbatical leave four months in advance is clear from the above letter in which the 2nd respondent has categorically stated that the process of grant of sabbatical leave is a lengthy one and, therefore, the request for grant of leave was rejected.

14. One other crucial aspect, which transpires from the said communication is that the 2nd respondent has categorically stated that from the letter of the petitioner the logical inference that is drawn is that the petitioner wants to lead a stress free life and also to undergo some surgical procedures as per the advice of the doctor. From this, the inference drawn is that the petitioner wants to make use of the sabbatical leave for his medical treatment. In such a backdrop, the request for sabbatical leave was turned down.

15. In the above context of the letter of the 2nd respondent, the reply of the petitioner dated 27.9.13 to the abovesaid communication of the 2nd respondent is also crucial. In the said letter, the petitioner has stated that vide letter dated 17.4.13, his entitlement and eligibility for sabbatical leave has been detailed. Curiously, the said letter is not filed along with the typed set of documents. However, a careful perusal of all the letters addressed by the petitioner, including the letter addressed seeking sabbatical leave, clearly reveals that in all the communications the petitioner has

highlighted the surgical procedures that have been advised for the petitioner by his doctor, which he needs to undergo and in the said backdrop, he has requested for grant of sabbatical leave. To highlight the said aspect, a portion of the letter dated 5.6.13, written by the petitioner to the 2nd respondent seeking commuted leave and permission to continue on sabbatical, is extracted hereunder for reference :-

"Following the surgical procedure, I have been advised medical rest for a period of one year and review of the procedure thereafter. Hence an application for sabbatical leave dated 20.4.02013 No.5 is submitted. I am consolidating my experiences in the field of Technical Education for more than quarter century. I hope to rejoin duty by May-June, 2014 after the review surgical procedure.

....."

16. A conjoint reading of the above letter with the other letters and the earned leave availed by the petitioner for a period of 54 days from 11.2.2013 to 5.4.2013 coupled with the letter of the 2nd respondent dated 13.9.13 clearly reveal that during the period of earn leave, the petitioner had underwent certain surgical procedures and the follow up of the same on the advise of the doctor, the petitioner, under the guise of consolidating his experience for the benefit of the community at large, has submitted the present application for sabbatical leave. The intent and purpose of the petitioner is clearly evident from the said letters which discloses that the main intention of the petitioner availing sabbatical leave is for the purpose of taking medical treatment, which is evident from the letter dated 5.6.13 written by the petitioner to the 2nd respondent and not its definitely not the purpose highlighted by the petitioner. All the above aspects have weighed with the Board of Governors while considering the request of the petitioner, which was ultimately rejected.

17. A further perusal of the materials forming the typed set reveals that pursuant to the letter dated 13.09.2013 of the 2nd respondent, the petitioner has written back to 2nd respondent on 27.9.13, and the tenor of the said letter written by the petitioner to the 2nd respondent leaves much to be said. However, this Court, in the fitness of decorum is not inclined to implore and amplify anything on it further. However, the said letter not only leaves a bitter taste in the minds of the persons who read the same, in which much castigation has been meted out to the entire administrative wing of the 2nd respondent, it has gone further to the extent of asking the 2nd respondent to withdraw all further proceedings with regard to the treating the period of leave as unauthorised absence in

contemplation of disciplinary proceedings.

18. In response to the above letter dated 27.9.13 of the petitioner, vide the impugned proceedings, the 2nd respondent has informed the petitioner that his request for sabbatical leave has been rejected by the Board of Governors. In the above backdrop of the application of the petitioner on 20.4.13 seeking sabbatical leave from 1.5.13, which is not in consonance with the procedure prescribed under the leave rules for applying for sabbatical leave, till the rejection of the said leave by the Board of Governors, all the communications clearly reveal that the sabbatical leave sought for by the petitioner highlights the need of sabbatical leave for the petitioner for the purpose of medical necessities to take care of his health on the advise of the doctor but is silent on the type of learning the petitioner intends to take for the purpose of honing his skills, which in turn would be useful to the institution and the public at large. In such a scenario, the respondents, after careful consideration, have declined to grant the sabbatical leave applied for by the petitioner, which is not for the purpose intended in the strictest sense, but only for other ancillary reasons and on the further ground that the said application for sabbatical leave is also not in consonance with the procedure prescribed under Rule 7.1.17 of the Leave Rules.

19. Further, it is trite that leave is not a matter of right, as has been repeatedly held by the Courts and more so, sabbatical leave being given to a member of service, with all the benefits, it is for the employer to decide on whether to approve the said leave applied by the employee. It is not open to the member of service to claim sabbatical leave as a matter of right, as the said leave is granted to the employee for sharpening his skills acquired over a period of years, which may enure to the benefit of the institution/employer. Such being the case, it is open to the petitioner to claim sabbatical leave applied for as a matter of right, that too without following the procedures prescribed for applying for leave. On a holistic consideration of the entire issue, this Court is of the considered view that the said rejection of sabbatical leave by the respondents does not call for any interference.

20. However, insofar as the 2nd limb of the impugned order relating to treating the period of unauthorised absence from 8.4.2013 till the date the petitioner rejoins duty to be treated as 'dies non', a careful perusal of the previous communications between the petitioner and the 2nd respondent reveals that the 2nd respondent, vide letter dated 13.9.13, has made his intention clear by calling upon the petitioner to submit his explanation as to why disciplinary action should not be taken against the petitioner for his unauthorised absence from 8.4.13, to which

the petitioner has submitted his explanation dated 27.9.13. That being the factual position, the lawful course for the 2nd respondent is to proceed against the petitioner by initiating the disciplinary proceeding in accordance with law and it is proper on the part of the 2nd respondent to treat the period of absence of the petitioner as 'dies non' without affording an opportunity to the petitioner to defend himself, when already a show cause notice stood issued to the petitioner by the 2nd respondent vide communication dated 13.9.13. Therefore, that portion of the impugned order is liable to be interfered with. However, this Court is of the considered opinion that the 2nd respondent is at liberty to proceed against the petitioner in accordance with law for his unauthorised absence.

21. Accordingly, while the impugned order dated 11.11.13 confirming the rejection of sabbatical leave of the petitioner is upheld, however, the portion of the order in and by which the period of unauthorised absence of the petitioner from 8.4.13 till the date he rejoins duty to be treated as 'dies non' is set aside. It is open to the 2nd respondent to proceed against the petitioner for his unauthorised absence in a manner known to law.

22. In the result, the writ petition is dismissed with the aforesaid observation and direction. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Chairman
National Institute of Technical
Teachers Training Institute
Tharamani, Chennai - 113.
2. The Director
National Institute of Technical
Teachers Training Institute
Tharamani, Chennai - 113.

W.P. NO.33349 OF 2013

EV (CO)

GN (28/10/2020)