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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 14.09.2020

+ **W.P.(C) 5496/2020**

PROFESSOR UDAYA KUMAR

..... Petitioner

Through: Mr. Abhik Chimni and Mr.
Mayank Goyal, Advocates.

versus

**JAWAHARLAL NEHRU UNIVERSITY, THROUGH ITS
REGISTRAR**

... Respondents

Through: Ms. Ankita Shah, Advocate for
Ms. Monika Arora, Advocate.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. Petitioner herein joined the Respondent University as a Professor on 01.10.2015 in the Centre for English Studies, School of Language Literature and Culture Studies. Petitioner, as averred in the petition, is a renowned scholar in his discipline of Literary Studies. He has been teaching English Literature and Cultural Studies for more than 23 years and has also researched and published extensively on English literature, literary and cultural theory, autobiography studies, modern Indian literature and cultural studies. Petitioner has to his credit prestigious fellowships at the Indian Institute of Advanced Study at Nehru Memorial Museum & Library and Leverhulme Visiting Professorship at Newcastle University, United Kingdom. He also held the position of Chairperson of

the Centre for English Studies from 12.01.2017 to 14.03.2018 and from 07.05.2018 to 11.01.2019.

2. On 21.01.2020, Petitioner, as required by the established procedure, wrote to the Registrar through the Dean (Head of the School of Language, Literature and Culture Studies) and the Chairperson (Head of the Centre for English Studies), and applied for Extra Ordinary Leave (hereinafter referred to as 'EOL') without pay for a period of 9 months, starting from 01.10.2020 to 30.06.2021, with vacation leave from 01.07.2021 to 14.07.2021, in order to pursue a Fellowship at Nantes Institute of Advanced Study, France.

3. According to the Petitioner, the Dean and the Chairperson who are the Academic and Administrative Officers of the Centre, recommended and forwarded his application to the Competent Authority. However, his application was rejected vide Resolution No. 6.6 passed in 284th meeting of the Executive Council (hereinafter referred to as 'EC') held on 18.02.2020 and thus the EOL was not sanctioned.

4. A letter dated 03.03.2020 was sent to the Petitioner communicating rejection of his Application for grant of EOL in the 284th meeting of the EC of the University. In response to the letter dated 03.03.2020, Petitioner wrote a letter dated 05.03.2020 to the Vice-Chancellor of the Respondent University, through proper channel, requesting him to furnish reason(s) for rejection of his application. Petitioner also stated therein that he met all parameters/criteria for availing EOL for the purpose of pursuing the Fellowship. However, there was no response to this e-mail sent by Petitioner.

5. Petitioner thereafter sent an e-mail dated 09.03.2020 to the Registrar asking for reasons for the alleged arbitrary rejection of his request and reiterated that he met all the parameters/criteria as per Rules and Ordinances for grant of EOL. Reminders via e-mails were sent on 16.04.2020 and 23.04.2020. Finally the Respondent responded to the Petitioner's e-mail on 24.04.2020, only intimating that his request for grant of EOL was not sanctioned but no reason was furnished, yet again, in the said e-mail.

6. Through a letter dated 12.06.2020, Respondent conveyed to the Petitioner that the EC Minutes did not contain any reason for not acceding to the Petitioner's request, as leave is not a matter of right of an employee. Petitioner, vide e-mail dated 07.07.2020 again requested the Registrar to clarify reason(s) for rejection of his leave application, so that he could satisfy the EC regarding the ground(s) on which the request for leave was rejected. He also expressed his willingness to address and remedy any shortfall in the application regarding any parameter/criteria for leave. The grievance of the Petitioner was again not redressed and the Registrar vide e-mail dated 07.07.2020 simply responded by stating that he endorsed the earlier reply sent to the Petitioner and as Secretary of the EC, had nothing more to advise. Having no other course of action open to him, Petitioner filed the present petition.

7. Mr. Abhik Chimni learned counsel for Petitioner contends that the order passed in 284th meeting of the Executive Council on 18.02.2020 is a non-speaking and unreasoned order. No reasons were communicated to the Petitioner and he was thus in the dark to know what parameters were

not fulfilled by him, leading to the rejection of his request for grant of EOL.

8. Learned counsel further points out that it is a matter of record that for considering the application for leave, various details were provided to the EC through the Agenda of the 284th Meeting dated 18.02.2020, yet the EC arbitrarily rejected the application and since it did not have a valid ground to reject the application an unreasoned and non-speaking order was passed. Relevant details provided to the EC are as follows:-

“(i) Form detailing requirements for the grant of leave as Annexure II,

(ii) The recommendation of the Dean of the School of Language, Literature and Culture Studies and Chairperson of the Centre for English Studies was on record through their signatures of approval recommending and forwarding the leave application of the Petitioner, and

(iii) The fact that it is one of the most prestigious fellowships available to an academicians and the EOL in Clause 10 (ii) (d) of the Leave Ordinance specifically provides for such Fellowships.”

9. Learned counsel draws the attention of the Court to the information furnished in Annexure-II to the agenda, more particularly at serialim 5, 10 (a), 10(b), 13 & 14. Relevant portions of Annexure-II are as extracted hereunder:-

	<i>Name & Designation</i>	<i>Prof. Udaya Kumar</i>
5.	<i>Name & Address of the Institution where programme of research</i>	<i>Institute of Advanced Study, Nantes, France</i>

	<i>etc. is to be pursued</i>	
10.(a)	<i>Extra Ordinary Leave availed till date</i>	<i>Nil at JNU, has availed 02 years of EOL prior to joining JNU, as mentioned in this application.</i>
10.(b)	<i>Duration of study/Sabbatical Leave or training programme availed during the last five years or any</i>	<i>Nil</i>
13.	<i>Teachers on long leave</i>	<i>One of the faculty members namely Prof. Makarand Paranjape is on Deputation to IAS, Shimla for a period of 3 years from 09/08/2018, or upto the date of superannuation, whichever is earlier.</i>
14.	<i>Whether the request of the teacher for leave falls within 20% ceiling</i>	<i>Yes</i>

10. Learned counsel further argues that an Authority cannot exercise the discretionary power vested in it in an arbitrary manner and is bound to exercise the discretion judiciously. The relevant information as presented to the Executive Council which included the parameters/criteria in Clause 10 (ii) (d) of the 'Ordinance for Regulating Leave to Teachers of the University', applicable w.e.f. 18.07.2018 (hereinafter referred to as '2018 Ordinance'), ought to have been judiciously considered by the Executive

Council, as every Administrative order must pass the test of reasonableness and fairness.

11. Learned counsel also argues that the action of the Respondent is *mala fide* and has its genesis in the earlier litigation to which the Petitioner was a party. He submits that it is a matter of record that the University, through its order dated 14.03.2018, had illegally removed one Dean and seven Chairpersons from their respective positions. These orders were impugned in W.P. (C) 3462/2018 titled **Kavita Singh & Ors. v. JNU & Ors.** Petitioner herein who was a co-Petitioner in the said case was also removed for raising pertinent questions with respect to the academic and administrative functioning of the University. It is on account of this litigation, which is still pending, that the Petitioner has been deprived of the benefit of EOL, which is his entitlement. He also submits that in a similar situation, Prof. Kavita Singh was also denied leave for certain projects in Colombia and the United States of America. It was only after an order was passed by this Court on 14.02.2019 in W.P. (C) 1349/2019 that relief was given to her.

12. Learned counsel for Petitioner also emphasizes on the fact that the Petitioner fulfils all criteria for grant of EOL, as under :-

- i. Petitioner availed no Extraordinary Leave during the last 5 years.
- ii. The leave request of the Petitioner falls within the 20% ceiling.
- iii. Petitioner is eligible for the EOL for the period applied.

13. It is argued that the Petitioner has not availed EOL during the last five years and also falls within the 20% ceiling and this is evident from a bare perusal of the data filled in Annexure-II, appended to the Agenda of 284th EC meeting.

14. It is contended that the grant of EOL is governed by the Leave Ordinance and Clause 10 of the said Ordinance provides that a teacher can apply for EOL to accept an invitation to a teaching post or Fellowship or Research-cum-Teaching post or an assignment for technical or academic work of importance. The prestigious Fellowship at the Nantes Institute of Advanced Study for which the Petitioner has been invited is thus clearly covered under the provisions of the Leave Ordinance.

15. The fulcrum of the argument of the Petitioner is that the application of the Petitioner has been recommended and forwarded by the Chairperson, who as per the procedure evolved by the University is the Authority to decide whether leave to a teacher would create hindrance in the functioning of the Centre. Simultaneously it is the Dean under whom the Centre operates who decides whether the leave would be justified in view of the administrative requirements of the School. Once the Chairperson and the Dean have recommended and forwarded the application through proper channel, there was no justification with the EC to reject the same.

16. Learned counsel draws the attention of the Court to Statute 7, of the Statute of the University, Second Schedule, Jawaharlal Nehru University Act, 1966, which defines the 'Dean of the School of Studies'

as well as Statute 18(2)(c)(I) with respect to the Chairperson of the Centre/Department. Relevant portions are as follows:-

“7. Dean of School of Studies:-

- (1) Every Dean of a School of Studies shall be appointed by the Vice-Chancellor from amongst the Professors of the School for a period of two years and he shall be eligible for reappointment:*

Provided that when the office of the Dean is vacant or when the Dean is, by reason of illness or absence for any other cause, unable to perform the duties of his office, the duties of the office shall be performed by such person as (the Vice- Chancellor may appoint for the purpose.

- (2) The Dean shall be the Head of the School of Studies and shall be responsible for the conduct and standard of teaching and research in the School. He shall have such other functions as may be prescribed by the Ordinances.*

- (3) The Dean shall have the right to be present and to speak at any meeting of a board or committee of the School, as the case may be, but not the right to vote thereat unless he is a member thereof.*

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“18.(2)(c)(I): Each Centre/Department shall have a Chairperson who shall be appointed by the Executive Council from amongst the Professors/Senior Fellows for a period of two years.”

17. Last but not the least, learned counsel also argues that the e-mail which has now been sent by the Respondent dated 08.09.2020 intimating the reason for rejection of the EOL, not only points to the *mala fide* of the

Respondent, but also gives an impression that the reason has been fabricated, after the present writ petition was filed by the Petitioner. He submits that before the filing of the present petition, three communications dated 03.03.2020, 12.06.2020 and 07.07.2020, were sent to the Petitioner rejecting his application for grant of EOL but none of them contained any reason for rejection and in spite of the Petitioner sending letters and reminders seeking the reasons for rejection, no reason ever came forth.

18. In any case, it is argued that the reason for rejection mentioned in the letter dated 08.09.2020 is completely untenable in law and under the Leave Ordinance. Relevant portion of the letter dated 08.09.2020 is as under:-

“I am directed to convey that in view of Academic Ordinance of the University which state that at no time more than 20% of the strength of teachers on rolls of a Centre shall be allowed to be absent on Extraordinary Leave, Study Leave and Sabbatical Leave.

The extract from the Academic ordinance of the University is as follows - The application for such leave shall be sent through the Dean of the school concerned and the latter shall give his/her recommendation taking into account the strength of teaching staff of the particular subject. At no time more than 20% of the strength of teachers on rolls of a Centre shall be allowed to be absent on Extraordinary Leave, Study Leave and Sabbatical Leave.

At present, the Centre for English Studies has 8 regular faculty members including the applicant/petitioner (Professor Uday Kumar). One of the faculty members namely Prof. Makarand Paranjape is already on deputation to IAS Shimla w.e.f. 09.08.2018 for a term of three years.

In view of the above said provision of academic ordinance of the University, your request does not fall under the ceiling of 20%. Therefore, your request for EOL has been declined.”

19. Learned counsel contends that the reason provided in the said letter does not hold good in law on two counts. Firstly, the 20% ceiling cited as a reason existed only in ‘Ordinance Relating to Conditions of Service of Appointed Teachers of the University, as updated up to 01.01.2016 (hereinafter referred to as the ‘2016 Ordinance’) and is conspicuously absent in the new Ordinance effective from 18.07.2018, which is applicable to the Petitioner’s case. He therefore submits that this reason does not come in the way of the Petitioner for grant of EOL. Assuming that 2016 Ordinance applies even then his case is within the 20% ceiling as clearly mentioned in the Agenda for the 284th meeting.

20. Learned counsel for the Petitioner relies on following judgements:-

- (a) *Kranti Associates Private Limited and Anr. Vs. Masood Ahmed Khan and Ors.*, (2010) 9 SCC 496
- (b) *Anil Kumar Gupta v. Municipal Corporation of Delhi*, 2008 SCC OnLine Del 834 : ILR (2009) 3 Del 1
- (c) *Rameshwar Prasad and Ors. Vs. Union of India and Anr.*, (2006) 2 SCC 1
- (d) *Khudiram Das Vs. State of West Bengal and Ors.*, (1975) 2 SCC 81
- (e) *S.M. Hamoodur Rehman Faridi Vs. Jamia Millia Islamia University*, in W.P.(C) 6279/2008

(f) *Delhi Science Forum v. Union of India*, (1996) 2 SCC 405

(g) *M.S. Nally Bharat Engineering Co. Ltd. v. State of Bihar*, (1990) 2 SCC 48

(h) *State of Punjab Vs. KN Khanna*, (2001) 2 SCC 330

21. Short affidavit has been filed by the University. Ms. Ankita Shah appearing on behalf of the Respondent University contends that the request of the Petitioner for grant of EOL for pursuing the Fellowship has been examined by the EC, which is the Competent Authority, to take a final decision in the matter and the decision along with the reason for rejection has been conveyed to the Petitioner by an e-mail dated 08.09.2020. She submits that as per the 2016 Ordinance, at no point in time, more than 20% of the strength of the teachers on rolls of a Centre shall be allowed to be absent on account of EOL/ Study Leave/ Sabbatical Leave. She submits that one of the members of the Centre for English Studies, which has 8 regular faculty members is already on deputation to IAS Shimla with effect from 09.08.2018 for a term of three years. In case the Petitioner is sanctioned EOL, ceiling of 20% would be crossed and thus EOL cannot be granted to the Petitioner.

22. As to the applicability of the 2018 Ordinance, relied upon by the learned counsel for the Petitioner, Ms. Shah learned Counsel, on instructions, submits that these are the UGC Guidelines. She candidly submits that no doubt the UGC Guidelines are binding on the University and are being followed by the University, however, the 2016 Ordinance

still holds the field and therefore the ceiling of 20% is a mandatory caveat before sanction of EOL to any faculty member.

23. I have heard the learned counsels for the parties and examined their rival contentions.

24. There is no doubt on the legal proposition that EOL or leave of any other kind can never be claimed as a matter of vested right by an employee. Leave is an entitlement as a part of service conditions, grant of which can certainly be refused in a given circumstance or in the exigencies of service. It is equally true that it is the domain and prerogative of an employer to sanction or deny leave to its employee. It is a settled law that it is not for the Courts to interfere in the day to day functioning of any Organization including issues relating to entitlement of Leave or any other service benefits. The present case is being examined on the anvil of these guiding principles.

25. First and foremost it needs a mention that perusal of the reason for rejection of request of EOL to the Petitioner indicates that the entitlement of the Petitioner to grant of EOL for a fellowship is not disputed by the Respondent and the denial is only on account of the alleged 20% ceiling on the number of faculty members, who can be granted leave, as provided in the 2016 Ordinance. As per the Petitioner 2018 Ordinance applies in which the said caveat is absent. Relevant part of 2016 Ordinance is as under:-

“8. Extraordinary Leave (EOL):

(i) A permanent teacher may be granted extraordinary leave –

- (a) When no other leave is admissible; or*
- (b) When other leave is admissible, the teacher applies in writing for the grant of extraordinary leave:*

Provided, however, that save under the provisions of sub-clauses (ii) to (iv) below, no extraordinary leave shall be granted to a teacher for holding an appointment or a fellowship outside the University.

(ii) The Executive Council may grant on the request from the institution concerned and on application of the teacher, extraordinary leave to hold an appointment or a fellowship under a Govt., a University, a Research Institute or other similar important institution, if in the opinion of the Executive Council, such leave does not prejudice the interest of the university. This leave may be allowed only to a teacher who has been confirmed in the post held by him and has served the university for a period of at least two years:

Provided that the Executive Council may grant exemption for the requirement of two years service in very exceptional cases.

Provided further that such leave shall not be granted until after the expiry of five years after return from a previous spell of extraordinary leave sanctioned under this sub-clause and sub-clause (iii) below.

Provided further that the applicability of five years gap not be applied in the case of faculty members who proceed on EOL upto one month and further that in case a faculty member proceeds on EOL for more than one month and less than one year he/she will not be eligible for grant of EOL for a period of three years. A faculty member who proceeds on EOL for a period of one year or more, the existing provision that he/she shall not be eligible for grant or EOL for 5 years will apply.

The application for such leave shall be sent through the Dean the School concerned and the latter shall give his/her recommendation taking into account the strength of teaching staff of the particular subject. At no time more than 20% of the strength of teachers on rolls of a Centre shall be allowed to be absent on extraordinary leave, study leave and/or sabbatical leave.”

26. Relevant part of 2018 Ordinance is as under:-

“10. EXTRAORDINARY LEAVE

(i) A permanent teacher may be granted extraordinary leave when:

- (a) No other leave is admissible; or*
- (b) Other leave is admissible and the teacher applies in writing for the grant of extraordinary leave.*

(ii) The extraordinary leave shall always be without pay and allowances. It shall not count for an increment except in the following cases:

- (a) Leave taken on the basis of medical certificates;*
- (b) Cases where the Vice-Chancellor is satisfied that the leave was taken due to causes beyond the control of the teacher, such as inability to join or rejoin duty due to civil commotion or a natural calamity, and the teacher has no other kind of leave to his credit;*
- (c) Leave taken for pursuing higher studies; and*
- (d) Leave granted to accept an invitation to a teaching post or fellowship or research-cum-teaching post or on assignment for technical or academic work of importance.*

(iii) Extraordinary leave may be combined with any other leave except the casual leave and special casual leave, provided that the total period of continuous absence from duty on leave (including periods of vacation when such vacation is taken in conjunction with leave) shall not exceed three years, except in cases where the leave is taken on medical certificate. The total period of absence from duty shall in no case, exceed five years in the entire service period of the individual.

(iv) The authority empowered to grant leave may commute retrospectively the periods of absence without the leave into extraordinary leave.”

27. The issues that need to be decided are in a narrow compass. Firstly, provisions of which of the two Ordinances shall govern the grant of EOL to the Petitioner and secondly, whether the rejection of the application for grant of EOL is justified.

28. Counsel for the Petitioner opposes the applicability of the 2016 Ordinance and contends that the 2018 Ordinance, which is a later Ordinance, shall apply and therefore there is no ceiling on the number of faculty members for granting leave. Respondent *per contra* relies on the 2016 Ordinance. It is true that in 2018 Ordinance cap of 20% is absent, however, in my view even if the 2016 Ordinance applies and the cap is applicable, the defence of the Respondent has no merit. This is for the simple reason that the data filled in Annexure-II, extracted above, reflects the stand of the University itself that the case of the Petitioner was within the ceiling limit. Secondly and significantly, as per the Ordinance, at no time more than 20% of the strength of the teachers on the rolls of a Centre shall be allowed to be absent on Extra Ordinary Leave, Study Leave and/or Sabbatical Leave. In the present case, one of the faculty

members, namely, Professor Makarnad Paranjape is not on leave, but is on deputation. Even otherwise, mathematically calculated, if one of the faculty members on strength of 8 is not available, the ceiling of 20% is not crossed as 20% of 8 is 1.6, which is more than one.

29. Learned counsel for Petitioner is right in his contention that the information placed before the EC by way of Annexure-II along with the Agenda reflected that his case was covered under the 20% ceiling. Ms. Ankita Shah has confirmed, on instructions, during the hearing that the said Annexure was filled by the Academic Branch of the University and was not a self-serving document of the Petitioner.

30. I have carefully perused Annexure-II appended to the Agenda to the 284th EC meeting. The relevant portion in this regard is the information at seriatim 10(a), wherein it is stated that the Petitioner has not availed any EOL, except for two years prior to his joining at Respondent University. It is also mentioned in the said Annexure that there are eight regular faculty members, including the Petitioner. In response to a specific question at seriatim 14, 'whether the request of the teacher for leave falls within 20% ceiling' the answer is 'yes'. What is also required to be noted here is that before the said answer, there is a specific question at seriatim 13, which is 'teachers on long leave' and in answer to this, it is mentioned that Professor Makarand Paranjape is on deputation for a period of three years. Despite this, the answer to the question at seriatim 14 is 'yes', meaning thereby that the case of the Petitioner was within the ceiling limit of 20%.

31. I also find force in the contention of the Petitioner that the Dean and the Chairperson as the Head of the School and the Centre, respectively, are the experts and the persons best placed to know the Semester-wise requirements of a teacher working in the Centre of the School. Petitioner has categorically stated that both the Chairperson and the Dean have recommended his application for EOL for a period of nine months starting from 01.10.2020 to 30.06.2021 to enable him to pursue his Fellowship at Nantes Institute of Advanced Study. Therefore it can hardly be argued by the Respondent that there is a requirement and an urgent need of the Petitioner at the University owing to which he cannot be spared for a period of 10 months. Learned counsel for Petitioner has importantly drawn the attention of the Court to the minutes of the Online Faculty Meeting held on 18.08.2020 wherein it is clearly noted that if the Petitioner is granted leave to take up the Fellowship at Nantes Institute of Advanced Study, he will continue to teach his course 'Conceptual Structures in Language literature, Art and Culture' online while being abroad and the course requirements will be completed through online classes and assignments at the end of the semester. Thus the semester courses under the Petitioner shall not be hampered. Relevant part of the Minutes of Meeting is extracted herein under:-

“It was decided that if Professor Udaya Kumar is granted leave to take up a fellowship at Nantes Institute of Advanced Study, he will continue to teach his course (ES682E Conceptual Structures in Language, Literature, Art and Culture) online from abroad, and course requirements will be completed through online classes and assignments at the end of the semester. Professor Kumar placed on record that he is offering this course with the clear understanding that this will pose no

impediment to his availing leave and to taking up the fellowship at Nantes, and will in no way prejudice his writ petition at Delhi High Court.”

32. I must express here that the Court is a little amazed at the resistance of the University to grant EOL to the Petitioner for his Fellowship. There is no gainsaying that the Petitioner herein is not going on leave for any self-service or self-employment. He is only going to acquire higher qualifications and in my view, it is a matter of great prestige also for the University that one of its Professors has been offered a Fellowship at a prestigious Institute for Advanced Study in France. The Court also cannot overlook the fact that ever since the Petitioner has joined Respondent University he has not availed a single day of EOL and has continued to serve the Respondent.

33. In my view the rejection of the application for grant of EOL is completely arbitrary and against the provisions of the Ordinance of the University and contravenes the *Wednesbury's* Principles of reasonableness and fairness. The defence of the Respondents regarding the 20% ceiling is untenable in law and cannot be sustained for the aforesaid reasons and the impugned orders including order dated 08.09.2020 deserve to be set aside.

34. In support of my observations I may allude to the judgement of the Supreme Court, relied upon by the Petitioner in ***Rameshwar Prasad (supra)***. Relevant paras of which are as under:-

“240. A person entrusted with discretion must, so to speak, direct himself properly in law. He must call his attention to matters which he is bound to consider. He must exclude from

his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules he may truly be said to be acting unreasonably. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.

241. It is an unwritten rule of law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote. (See Shalini Soni v. Union of India [(1980) 4 SCC 544 : 1981 SCC (Cri) 38] .)

242. The Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] principle is often misunderstood to mean that any administrative decision which is regarded by the Court to be unreasonable must be struck down. The correct understanding of the Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] principle is that a decision will be said to be unreasonable in the Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] sense if (i) it is based on wholly irrelevant material or wholly irrelevant consideration, (ii) it has ignored a very relevant material which it should have taken into consideration, or (iii) it is so absurd that no sensible person could ever have reached it.

243. As observed by Lord Diplock in CCSU case [(1996) 4 SCC 104 paras 9-10] a decision will be said to suffer from Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] unreasonableness if it is

“so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it” (All ER p. 951a-b).”

35. Useful it would be to refer to judgement of this Court in **S.M. Hamoodur Rehman (supra)**, in which the following observations are significant:-

“4. Discretionary power vested in any authority has to be guided. An unguided discretionary power may be attacked as vesting an arbitrary power in the authority and the exercise of such discretionary power may result in arbitrary and whimsical exercise of that power. The guideline for the exercise of the discretionary power by the Vice Chancellor in this case is found in the relevant Ordinance itself.

5. In *Shriram Sugar Industries Ltd. Vs. State of Andhra Pradesh and Others* (1974) 1 SCC 534, the Supreme Court quoted with approval the following passage from Halsbury (Vol.1), 4th Edition Para 33 at page 35 as under:

“A public body endowed with a statutory discretion may legitimately adopt general rules or principles of policy to guide itself as to the manner of exercising its own discretion in individual cases, provided that such rules or principles are legally relevant to the exercise of its powers, consistent with the purpose of the enabling legislation and not arbitrary or capricious. Nevertheless, it must not disable itself from exercising a genuine discretion in a particular case directly involving individual interests, hence it must be prepared to consider making an exception to the general rule if the circumstances of the case warrant special treatment. These propositions, evolved mainly in the context of licensing and other regulatory powers, have been applied to other situations, for example, the award of discretionary investment grants and the allocation of pupils to different classes of schools. The amplitude of a discretionary power may, however, be so wide that the competent authority may be impliedly entitled to adopt a fixed rule never to exercise its discretion in favour of a particular class

of persons; and such a power may be expressly conferred by statute.” (emphasis supplied)

6. In ***Khudi Ram Dass Vs. State of West Bengal*** (1975) 2 SCC 81 the Supreme Court was dealing with a case involving judicial review of an administrative action which required subjective satisfaction of the authority concerned for the exercise of his discretion. I may note that the discretion exercised by the Vice Chancellor while considering the aspect of age relaxation under the ordinance in question requires the objective consideration of the cases before him. The scope of judicial review of administrative action based on objective considerations would be the same, if not wider than the judicial review of administrative action based on subjective satisfaction. The Supreme Court in *Khudi Ram Dass Vs. State of West Bengal* (supra), *inter alia*, held as follows :

“9. But that does not mean that the subjective satisfaction of the detaining authority is wholly immune from judicial reviewability. The courts have by judicial decisions carved out an area, limited though it be, within which the validity of the subjective satisfaction can yet be subjected to judicial scrutiny. The basic postulate on which the courts have proceeded is that the subjective satisfaction being a condition precedent for the exercise of the power conferred on the Executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority : if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad. There are several grounds evolved by judicial decisions for saying that no subjective satisfaction is arrived at by the authority as required under the statute..... and so also would the exercise of the power be vitiated where the authority has disabled itself from applying its mind to the facts of each individual case by self-created rules of policy or in any other manner. The satisfaction said

to have been arrived at by the authority would also be bad where it is based on the application of a wrong test or the misconstruction of a statute. Where this happens, the satisfaction of the authority would not be in respect of the thing in regard to which it is required to be satisfied. Then again the satisfaction must be grounded "on materials which are of rationally probative value". Machindar v. King, AIR 1950 FC 129. The grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. Pratap Singh v. State of Punjab, AIR 1964 SC 72. If there are to be found in the statute expressly or by implication matters which the authority ought to have regard to, then, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider."

"10. There is also one other ground on which the subjective satisfaction reached by an authority can successfully be challenged and it is of late becoming increasingly important. The genesis of this ground is to be found in the famous words of Lord Halsbury in Sharp v. Wakefield, 1891 AC 173, 179: "... when it is said that something is to be done within the discretion of the authorities ... that something is to be done according to the rules of reason and justice, not according to private opinion ... according to law and not humour. It is to be, not arbitrary, vague, fanciful,

but legal and regular.”” “11. This discussion is sufficient to show that there is nothing like unfettered discretion immune from judicial reviewability. The truth is that in a Government under law, there can be no such thing as unreviewable discretion. “Law has reached its finest moments”, said Justice Douglas, “when it has freed man from the unlimited discretion of some ruler, some ... official, some bureaucrat.... Absolute discretion is a ruthless master. It is more destructive of freedom than any of man’s other inventions”. United States v. Wunderlick, (1951) 342 US 98. And this is much more so in a case where personal liberty is involved. That is why the courts have devised various methods of judicial control so that power in the hands of an individual officer or authority is not misused or abused or exercised arbitrarily or without any justifiable grounds.” (emphasis supplied)

*7. In **S. R. Venkataraman Vs. U.O.I.** (1979) 2 SCC 491, the Supreme Court cited with approval English decisions in **Queen on the prosecution of the Richard Westbrook Vs. The Vestry of Saint Pancras** (1890) 24 Q BD 371, 375 and **Sadler Vs. Sheffield Corporation** (1924) 1 Ch 483. In **Westbrick** (Supra) the House of Lords speaking through Lord Esher, M.R. held :*

“If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion.”

36. In view of the above, Respondent University is directed to sanction Extraordinary Leave to the Petitioner with effect from 01.10.2020 to 30.06.2021, to enable him to pursue his Fellowship. Since the Fellowship starts from 01.10.2020 and there are several formalities and modalities which have to be completed by the Petitioner before he travels, the

exercise of sanctioning the Extra Ordinary Leave shall be undertaken and completed within a period of three days from today.

37. Present writ petition is accordingly allowed. Impugned orders are hereby set aside. Due to the illegal and arbitrary rejection of the request of the Petitioner for grant of EOL, Petitioner was constrained to file the present petition and accordingly cost of Rs. 20,000/- is awarded in favour of the Petitioner.

JYOTI SINGH, J

SEPTEMBER 14, 2020/yo



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