

09.08.2021
SL No. 5
Court No. 24
(P.M.)

WPA 8348 of 2021

Dr. Ramij Rahaman
Vs
The Presidency University & Ors.
(Via Video Conference)

Ms. Sucharita Biswas
... for the petitioner

Mr. Partha Ssarathi Sengupta, Sr. Adv.
Mr. Soumya Majumder
Mr. Victor Chatterjee
... for the University.

The petitioner, while he was engaged in the Allahabad University, applied for joining as Assistant Professor simultaneously before the Presidency University as well as Indian Statistical Institute, Kolkata. The petitioner joined the Presidency University on 1st October, 2018 and his service was confirmed by letter dated 21st October, 2019.

In July, 2020 the petitioner was selected as Assistant Professor in the Indian Statistical Institute and he was requested to join by 31st December, 2020.

On 19th October, 2020 the petitioner requested the Vice Chancellor of the University praying for allowing fourteen months' extraordinary leave, as lien, from 1st December, 2020 to 31st January, 2022 and permitting him to join Indian Statistical Institute.

By a communication dated 9th November, 2020 the petitioner was intimated that the Vice Chancellor has granted extraordinary leave, without pay, for three months with effect from 1st December, 2020 to 28th February, 2021 to enable him to accept the post of Assistant Professor in Indian Statistical Institute subject to receipt of clearance certificates from the respective departments. The same was issued subject to approval of the Governing body.

By a further communication dated 1st December, 2020 the petitioner was intimated that he is being released from his present position at Presidency University with effect from 1st December, 2020 to enable him to accept the position of Assistant Professor at Indian Statistical Institute.

The petitioner thereafter by a series of representations requested the University to grant leave, as lien, for the period of 1st March, 2021 to 1st February, 2022.

By a communication dated 25th February, 2021 the petitioner was intimated that the Vice Chancellor did not allow the extension of his extraordinary leave beyond 28th February, 2021 in the interest of students and the University. The petitioner was requested to join the University on completion of the period of lien which was due to expire on 28th February, 2021. The petitioner was however, intimated that the University was ready to release him permanently at any point of time against submission of his technical resignation within the approved period of extraordinary leave.

The petitioner on 27th February, 2021 tendered his technical resignation and release order was issued in favour of the petitioner on 1st March, 2021 upon acceptance of his resignation. The release order was issued under the direction of the Vice Chancellor in terms of the relevant resolution of the meeting of the Governing body.

The petitioner relies upon Rule 14 of the Service Rule of the Presidency University. It has been pointed out that according to the Rule 14 of the said Rule, permanent and confirmed employees shall acquire a lien on his/her post; provided that no employee shall keep lien on his/her post for more than two years unless the period of lien has been specifically extended by the Governing body/Presidency University Council beyond that period.

The petitioner submits that according to the aforesaid Rule he is entitled to lien for a period of two years and not for three months as has been granted in his case.

The learned senior advocate representing the University relies upon the resolution of the Governing body held on 12th February, 2020.

The Governing Body of the University being the appropriate authority to take a decision with regard to the issue relating to releasing the employees for taking up assignments in government/government-aided organization has adopted a resolution held in its meeting on 12th February, 2020.

7.2 of the said resolution mentions that the members present discussed the issue of releasing the employees for taking up any assignments in Government/Government aided organization in a substantive post and unanimously resolved the following:

“A permanent and confirmed employee of Presidency University can retain a lien in his/her present post while joining in a substantive post in another government/government aided organization only when he/she had applied through Presidency University by obtaining written ‘No Objection’ certificate issued by the authority of Presidency University for that specific purpose.

In the cases where a permanent and confirmed employee did not have the written No Objection certificate issued by the authority of Presidency University for the specific purpose of applying for a post in another government/government-aided organization, the Vice Chancellor may allow that employee to enable him/her to join in said post with an Extra Ordinary Leave (without pay) for a period of not exceeding 3(three) months in the interest of the students and university and the same matter has to be reported in the Governing Board for ratification.

However, in this regard, the employee may be released permanently against resignation at any point of time and in that case service records and benefits of the employee will be transferred (as applicable in terms of the order of the State Government from time to time).

The matter was taken as confirmed.”

In the said resolution it was categorically mentioned that the lien can be retained only when the employee applied through Presidency University by obtaining written No Objection certificate issued by the authority of Presidency University for that specific purpose. Where the No Objection certificate is not issued the Vice Chancellor may allow that employee to enable him to join in the post with extraordinary leave (without pay) for a period of not exceeding three months. The employee may, however, be released permanently against resignation at any point of time.

It has been submitted that in accordance with the aforesaid resolution of the Governing body three months lien as extraordinary leave (without pay) was allowed in favour of the petitioner. Thereafter in accordance with the resolution the petitioner has been released against acceptance of his technical resignation.

From the submission of the parties it appears that the Presidency University Rule though provides for lien for a period of two years, but according to the resolution of the Governing body the said lien has to be obtained only after obtaining No Objection certificate from the Presidency University for that purpose.

In the instant case, the petitioner obtained No Objection certificate from the Allahabad University from where he applied for joining Indian Statistical Institute. The

petitioner while in service in the Presidency University did not make the application for joining Indian Statistical Institute. The application was made prior to the petitioner joining Presidency. The Presidency University never issued any No Objection certificate in favour of the petitioner for joining Indian Statistical Institute. The petitioner never applied before the Presidency University for obtaining No Objection certificate for the purpose of joining Indian Statistical Institute.

According to the resolution of the Governing Body the petitioner was allowed extraordinary leave for a period of three months as he did not have the No Objection certificate issued by Presidency University. Thereafter further extension was not granted in favour of the petitioner in accordance with the Governing Body resolution. The petitioner has been released upon acceptance of his resignation.

The Court fails to find any infirmity in the action of the University.

In view of the above, no relief can be granted to the petitioner in the instant case.

The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)