

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CM-60-CWP-2021 in/and
CWP-21124-2020
Decided on : 12.01.2021**

Deepak Kumar

... Applicant/ Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Jagjeet Beniwal, Advocate
for the applicant/petitioner.

Mr. Shivendra Swaroop, AAG, Haryana.

(The proceedings are being conducted through
video conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

CM-60-CWP-2021

In view of the averments made in the application for preponement, the same is allowed. The main case is preponed from 22.01.2021 to today itself.

CM stands disposed off.

Main case

The petitioner in the present writ petition filed under Articles 226/227 of the Constitution of India seeks quashing of the order dated 22/23.10.2020 (Annexure P-13) passed by respondent No.1, vide which his application for grant of extra-ordinary leave to pursue M.Tech (final year) Course was rejected. The rejection was on the ground that the petitioner had not completed three years regular service and as per Rule 41 of the Haryana Civil Services (Leave) Rules, 2016, the extra-ordinary leave could

not be granted.

Counsel for the petitioner has submitted that the said requirement is only as per the provisions of Rule 41, Clause (iii), whereby a condition has been imposed that three years continuous service is required for grant of 24 months extra-ordinary leave for higher studies. The said rule also provides six months extraordinary leave due to be granted on any one occasion.

A perusal of the paper-book would go on to show that the petitioner had been admitted in the M.Tech Course for the Session 2019-2021 in the Indian Institute of Technology, Mandi, which is a minimum 2 years course. In the meantime, he was appointed to the post of Junior Engineer (Civil) on 17.06.2020 as per Annexure P-1 and joined as such with the Municipal Corporation, Sonapat on 18.06.2020 and at present is posted with respondent No.3-Municipal Corporation, Karnal. As per the Clause (xi) of the appointment letter, he was required to take prior permission to undertake any higher studies, from the competent authority. Resultantly, he applied for extra-ordinary leave for 340 days to continue his studies to complete his balance two semesters. His case was forwarded as such by the authorities below vide Annexure P-4. However, the same was not processed and resultantly he had filed CWP No.14051 of 2020, wherein directions were given to take a final decision within seven days, on 10.09.2020 (Annexure P-8). Resultantly, the impugned order has been passed.

Counsel for the State has defended the said order on the

ground that 3 years of continuous service as such is required for the said benefit. It is submitted that the petitioner is seeking extra-ordinary leave for a period of 340 days and, therefore, Clause (iii) of Rule 41 would be applicable. The instructions of 18.02.1972 (Annexure P-12), which the petitioner had relied upon and placed reliance upon Annexure P-14, wherein another person had been allowed to complete the course, vide order dated 07.09.2012 and the necessary permission, which had been granted on 24.09.2020 (Annexure P-15) had been distinguished on the ground that it was for a period of less than six months i.e. 176 days.

Counsel for the petitioner has submitted that in view of the Covid-19 situation, he has been allowed to register for 3rd semester, course of which has started from 26.12.2020 and restricted his claim for grant of extra-ordinary leave for a period of six months at this stage. Rule 41 which is pertaining to the extra-ordinary leave reads as under:-

“41. Limit of Extraordinary Leave on any one occasion:-

Extraordinary leave not exceeding the following limits may be granted on any one occasion:-

- (i) six months;
- (ii) 24 months on medical certificate signed by the competent medical authority subject to acceptance of medical certificate by the leave sanctioning authority; and
- (iii) 24 months for the purpose of higher studies/training to be certified by Government in public interest provided the Government employee concerned has completed three years

continuous service on the date of expiry of leave of the kind due and admissible under the rules (including six months extraordinary leave under (i) above) before the commencement of such leave.”

A perusal of the above would go on to show that it is divided in three parts, wherein for six months there is no such condition of 3 years continuous service. For six months there is no such condition, which has been imposed and thereafter for the second eventuality (ii) medical certificate is to be produced, subject to acceptance by the leave sanctioning authority. It is only in the case of Clause (iii), whereby 2 years (24 months) extra-ordinary leave for the purposes of higher studies/training is applied, wherein the person has to have three years continuous service. The petitioner's case, thus, has been processed only under the third condition, since he had not asked for the extra-ordinary leave for a period of 2 years. The respondents have failed to exercise their jurisdiction under Rule 41 (i) to grant him the benefit of extra-ordinary leave for one semester. Resultantly, the order as such denying him the extra-ordinary leave is not sustainable to that extent and is liable to be quashed.

Resultantly, the writ petition is allowed and the order dated 22/23.10.2020 (Annexure P-13) is quashed. The direction is issued to the respondents to grant extra-ordinary leave for a period of six months starting from 20.01.2021, so that he can complete his 3rd semester in the M.Tech Course. Needless to say that since the petitioner would not be

working for this period, he will not be entitled for any remuneration by way of pay, as undertaken in the paragraph No.17 of the writ petition.

The writ petition stands allowed, in the above said terms.

JANUARY 12, 2021
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No